



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 29 अगस्त, 2014 / 7 भाद्रपद, 1936

हिमाचल प्रदेश सरकार

श्रम एवं रोज़गार विभाग

अधिसूचना

शिमला-2, 27 अगस्त, 2014

संख्या : लैब-11-2-3/83.—कर्मचारी राज्य बीमा अधिनियम, 1948 के उपबंधों को, ऐसे कतिपय स्थापनों, जिसमें दस या दस से अधिक व्यक्ति पूर्ववर्ती बारह मास में किसी भी दिवस नियोजित थे या हैं, को विस्तारित करने की बावत प्रस्ताव को इस विभाग की संमसख्यक अधिसूचना, तारीख 28-06-2014 द्वारा कर्मचारी राज्य बीमा अधिनियम, 1948 की धारा 1 की उपधारा (5) के उपबंधों के अधीन यथा अपेक्षित तद्द्वारा

संभाव्य प्रभावित होने वाले व्यक्तियों से इसके प्रकाशन की तारीख से एक मास की अवधि के भीतर, आक्षेप(पों) सुझाव (वों) को आमन्त्रित करने के लिए राजपत्र, हिमाचल प्रदेश में तारीख 28-06-2014 को प्रकाशित किया गया था;

और उपरोक्त नियत अवधि के भीतर इस निमित्त कोई भी आक्षेप(पों)/सुझाव(वों) प्राप्त नहीं हुए हैं;

अतः, हिमाचल प्रदेश की राज्यपाल, पूर्वोक्त अधिनियम की धारा 1 की उपधारा (5) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निगम के परामर्श से और केन्द्रीय सरकार के पूर्व अनुमोदन से, निम्न अनुसूची में यथा विनिर्दिष्ट स्थापनों में उपरोक्त अधिनियम के उपबंधों को विस्तारित करती है; अर्थात :-

"अनुसूची"

स्थापनों का विवरण		क्षेत्र जहाँ स्थापन स्थित हैं
1		2
निम्नलिखित स्थापन जिनमें 10 या 10 से अधिक व्यक्ति पूर्ववर्ती बारह मास के किसी दिन नियोजित थे या हैं: -		क्षेत्र, जहाँ कर्मचारी राज्य बीमा अधिनियम, 1948 के उपबंध अधिनियम की धारा 1 (3) के अधीन पहले ही प्रवृत्त किए गए हैं।
(i)	दुकानें;	
(ii)	होटल;	
(iii)	रेस्तरां;	
(iv)	सड़क मोटर परिवहन; स्थापन	
(v)	पूर्वदर्शन थिएटर सहित सिनेमा;	
(vi)	श्रमजीवी पत्रकार और अन्य समाचार-पत्र कर्मचारी (सेवा की शर्तों) और प्रकीर्ण उपबंध अधिनियम, 1955 (1955 का 45) की धारा 2 (घ) में यथा परिभाषित समाचार; स्थापन	
(vii)	शैक्षणिक संस्थाएं जो व्यष्टियों, न्यासियों, सोसाइटियों या अन्य संगठनों द्वारा चलाई जा रही (सार्वजनिक, प्राइवेट, सहायता प्राप्त या आंशिक रूप से सहायता प्राप्त सहित) हैं;	
(viii)	चिकित्सा संस्थाएं (निगम, संयुक्त सेक्टर, न्यास, पूर्ण और प्राइवेट स्वामित्व वाले अस्पताल, नर्सिंग होम, डायग्नोस्टिक केन्द्र, पैथालोजिकल प्रयोग शालाओं सहित) ।	

आदेश द्वारा,
आर० डी० धीमान,
प्रधान सचिव (श्रम एवं रोजगार)।

[Authoritative English Text of this Department Notification No. Lab.-11-2-3/83 dated 27-08-2014 as required under clause (3) of the Article 348 of the Constitution of India].

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 27th August, 2014

No. Lab.-11-2-3/83.—Whereas, the proposal regarding extending the provisions of the Employees State Insurance Act, 1948 in respect of certain establishments wherein 10 or more persons are employed or were employed on any day of the preceding twelve months was published in the Rajpatra, Himachal Pradesh, dated 28-06-2014 vide this Department notification of even number dated 28-06-2014 for inviting objection (s)/suggestion (s) from person (s) likely to be affected thereby as required under the provision of sub-section (5) of Section 1 of the Employees State Insurance Act, 1948 within a period of one month from the date of its publication;

And whereas, no objection (s) / suggestion (s) have been received in this behalf within the above stipulated period;

Now, therefore, the Governor, Himachal Pradesh, in exercise of the powers conferred by sub-section (5) of section 1 of the Act *ibid*, in consultation with the Corporation and with the prior approval of the Central Government, is pleased to extend the provisions of the above Act to the establishments as specified in the following Schedule; namely:—

“ SCHEDULE ”

Description of establishments		Areas in which establishments are situated
1		2
The following establishments wherein ten or more persons are employed or were employed on any day of the preceding twelve months:—		Areas where the provisions of the Employees State Insurance Act, 1948 have already been brought into force under section 1 (3) of the Act.
(i)	Shops;	
(ii)	Hotels;	
(iii)	Restaurants;	
(iv)	Road Motor Transport establishments;	
(v)	Cinemas including preview theatres;	
(vi)	Newspaper establishments as defined in section 2 (d) of the Working Journalists (conditions of service) and Miscellaneous Provisions Act, 1955 (45 of 1955).	
(vii)	Educational Institutions (including public, private, aided or partially aided) run by individuals, trustees, societies or other organizations;	

(viii)	Medical Institutions (including corporate, joint sector, trust, charitable and private ownership Hospitals, Nursing Homes, Diagnostic centres, pathological labs.).	
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By order,
R. D. DHIMAN,
Pr. Secretary (Lab. & Emp.).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, the 25th August, 2014

No. HHC/Estt. 3 (509)/2000.—04 days earned leave on and w.e.f. 11.08.2014 to 14.08.2014, with permission to prefix second Saturday & Sunday on 09.08.2014 & 10.08.2014, is hereby sanctioned, ex-post-facto, in favor of Shri Subhash Chand Sharma, Secretary of this Registry.

Certified that Shri Subhash Chand Sharma has joined the same same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Subhash Chand Sharma would have continued to officiate the same post of Secretary but for his proceeding on above leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171001

NOTIFICATION

Shimla, the 26th August, 2014

No. HHC/Admn. 6 (23)/74-XV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Civil Judge (Junior Division)-cum-JMIC (VI), Shimla, H.P. as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Junior Division)-cum-JMIC (V), Shimla and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court under Major Head "2014-Administration of Justice" during the earned leave period of Ms. Neha Sharma, Civil Judge (Jr. Division)-cum-JMIC (V), Shimla w.e.f. 30.8.2014 to 8.9.2014 or until she returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH SHIMLA -171001**NOTIFICATION***Shimla, the 26th August, 2014*

No. HHC/GAZ/ 14-321/2011.—Hon'ble the Chief Justice has been pleased to grant 10 days' earned leave w.e.f. 30.08.2014 to 8.9.2014 in favour of Ms. Neha Sharma, Civil Judge (Junior Division)-cum-JMIC (V), Shimla, H.P.

Certified that Ms. Neha Sharma is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Neha Sharma would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC (V), Shimla, H.P., but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001**NOTIFICATION***Shimla, the 26th August, 2014*

No. HHC/Admn. 16 (13)74-VIII.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioner (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Umesh Suman and Ms. Manju Sharma, Advocates, Theog, as Oath Commissioners at Theog, H.P. for a period of two years, with immediate effect for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001**NOTIFICATION***Shimla, the 26th August, 2014*

No. HHC/GAZ/ 14-255/2002-I.—Hon'ble the Chief Justice has been pleased to grant ex-post facto sanction of 03 days' commuted leave w.e.f. 30.7.2014 to 1.8.2014 in favour of Ms. Kanta Verma, Civil Judge (Sr. Division)-cum-ACJM (I), Shimla, H.P.

Certified that Ms. Kanta Verma has joined the same post and at the same station from where she had proceeded on leave, after expiry of the above period of leave.

Also certified that Ms. Kanta Verma would have continued to hold the post of Civil Judge (Sr. Division)-cum-ACJM (I), Shimla, H.P., but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

बहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

दिनांक : 23 अगस्त, 2014

संख्या: विद्युत-छ-(5)-59/2013.—यतः राज्यपाल, हिमाचल प्रदेश को यह प्रतीत होता है कि सतलुज जल विद्युत निगम लिमिटेड जो कि भू-अर्जन अधिनियम, 1894 (1894 का पहला अधिनियम) की धारा-3 के खण्ड (सी.सी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है के द्वारा अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः मुहाल रिवाली, तहसील कुमारसैन, जिला शिमला, हि0प्र0, में लूहरी जल विद्युत परियोजना के लिए क्षेपण व कार्यालय परिसर सुविधा के उद्देश्य के लिए भूमि अर्जित करनी आपेक्षित है, अतएव: एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है को उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निर्देश दिया जाता है।

3. भूमि के रेखांक का निरीक्षण कार्यालय सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 में किया जा सकता है।

विवरणी

जिला	तहसील	ग्राम	खसरा नं०	रकवा(है०) में
शिमला	कुमारसैन	रिवाली	125	0-15-62
			79	0-33-19
			81	0-06-34
			97	0-19-28
			85	0-21-41
			90	0-01-20
			91	0-01-46
			92	0-01-08
			94 / 2	0-30-03
			82 / 1	0-06-76
			95	0-09-00
			82	0-07-74

96	0-09-69
83	0-16-99
124	0-22-77
101	0-01-41
102	0-24-96
131 / 2	0-05-54
98	0-18-08
111	0-20-91
122	0-03-15
123	0-06-79
128	0-04-20
129	0-20-52
126	0-22-48
127	0-04-20
105	0-19-31
106	0-35-36
114	0-10-91
112	0-10-98
113	0-01-88
108	0-13-33
121	0-10-58
119	0-23-58
88	0-01-20
89	0-02-79
104	0-20-77
86	0-16-77
87	0-28-28
120	0-30-90
116	0-00-72
117	0-39-67
118	0-06-65
109	0-32-69
110	0-34-25
100	0-25-66
103	0-13-50
184 / 1	0-00-62
182 / 1	0-00-51
177 / 1	0-00-50
178 / 1	0-00-92
180	0-26-09

बहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

दिनांक: 23 अगस्त, 2014.

संख्या: विद्युत-छ-(5)-54/2013.—यतः राज्यपाल, हिमाचल प्रदेश को यह प्रतीत होता है कि सतलुज जल विद्युत निगम लिमिटेड जो कि भू-अर्जन अधिनियम, 1894 (1894 का पहला अधिनियम) की धारा-3 के खण्ड (सी.सी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है के द्वारा अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः मुहाल फिरनू, तहसील करसोग, जिला मण्डी, हि0प्र0, में लहूरी जल विद्युत परियोजना के लिए भूमि क्षेपण, एडिट व कार्य सुविधा के उद्देश्य के लिए भूमि अर्जित करनी अपेक्षित है, अतएव: एतद्द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है को उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्द्वारा निर्देश दिया जाता है।

3. भूमि के रेखांक का निरीक्षण कार्यालय सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 में किया जा सकता है।

विवरणी

जिला	तहसील	ग्राम	खसरा नं०	रकवा(बिघा) में
मण्डी	करसोग	फिरनू	31	1-6-8
			37	0-4-15
			505 / 79	5-17-1
			328	2-19-8
			329	6-3-17
			498 / 79	4-19-2
			499 / 79	3-2-4
			500 / 79	3-15-7
			32	2-5-9
			333	2-1-3
			327	1-11-2
			512 / 18	6-1-19
			किता-12	40-07-15 बिघा

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (विद्युत)।

बहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

दिनांक: 23 अगस्त, 2014.

संख्या: विद्युत-छ-(5)-41/2013.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि सतलुज जल विद्युत निगम लिमिटेड जो कि भू-अर्जन अधिनियम, 1894 (1894) का पहला अधिनियम की धारा-3 के खण्ड (सी.सी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है के द्वारा अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव भराड़ा, तहसील सुन्नी, जिला शिमला, हि0प्र0 में लूहरी जल विद्युत परियोजना के लिए भूमि क्षेपण (Dumping) हेतु भूमि अर्जित करनी आपेक्षित है, अतएव: एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है को उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निर्देश दिया जाता है।

3. भूमि के रेखांक का निरीक्षण कार्यालय सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 में किया जा सकता है।

विवरणी

जिला	तहसील	गांव	खसरा नं०	रकबा (है० में)
शिमला	सुन्नी	भराड़ा	428	00—20—41
			433	00—00—81
			434	00—06—75
			435	00—09—22
			436	00—12—70
			437	00—04—44
			438	00—31—23
			451 / 1	00—02—94
			448 / 1	00—03—58
			485 / 1	00—05—60
			487 / 1	00—09—72
कुल किता— 11			कुल रकबा—01—07—40	

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (विद्युत)।

बहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

दिनांक: 23 अगस्त, 2014.

संख्या: विद्युत-छ-(5)-7/2013.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश राज्य विद्युत परिषद् लिमिटेड जो कि भू-अर्जन अधिनियम, 1894 (1894 का पहला अधिनियम) की धारा-3 के खण्ड (सी.सी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है के द्वारा अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः मुहाल ध्यानपुर, तहसील अर्की, जिला सोलन, हिमाचल प्रदेश में 220 केवी0 लाईन कुनिहार से रौड़ी (दाड़लाघाट) के निर्माण हेतु भूमि अर्जित करनी आपेक्षित है, अतएव: एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है को उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, हिमाचल प्रदेश राज्य विद्युत परिषद् सीमित, उत्तम भवन, शिमला-171004 को उक्त उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निर्देश दिया जाता है।

3. भूमि के रेखांक का निरीक्षण कार्यालय भू-अर्जन समाहर्ता, हिमाचल प्रदेश राज्य विद्युत परिषद् सीमित, उत्तम भवन, शिमला-171004 हिमाचल प्रदेश में किया जा सकता है।

विवरणी

जिला	तहसील	ग्राम	खसरा नम्बर	रकबा (बीधो में)
सोलन	अर्की	ध्यानपुर	399 / 364 / 148 / 1	0—5
			182 / 1	0—5
			355 / 1	0—5
			355 / 2	0—5
			किता— 4	

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (विद्युत)।

बहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

दिनांक : 23 अगस्त, 2014

संख्या: विद्युत-छ-(5)-55/2013.—यतः राज्यपाल, हिमाचल प्रदेश को यह प्रतीत होता है कि सतलुज जल विद्युत निगम लिमिटेड जो कि भू-अर्जन अधिनियम, 1894 (1894 का पहला अधिनियम) की धारा-3 के खण्ड (सी.सी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है के द्वारा

अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः मुहाल कोट, तहसील करसोग, जिला मण्डी, हि0प्र0 में लूहरी जल विद्युत परियोजना के लिए क्षेपण सुविधा के उद्देश्य के लिए भूमि अर्जित करनी आपेक्षित है, अतएव: एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है को उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्वारा निर्देश दिया जाता है।

3. भूमि के रेखांक का निरीक्षण कार्यालय सतलुज जल विद्युत निगम लिमिटेड, लूहरी जल विद्युत परियोजना, स्थित बिथल, तहसील कुमारसैन, जिला शिमला, हि0प्र0 में किया जा सकता है।

विवरणी

जिला	तहसील	ग्राम	खसरा नं.	रकबा (बिघा)में
मण्डी	करसोग	कोट	75	0-1-15
			83	0-1-2
			84	0-1-10
			88	0-3-0
			992	0-0-16
			97	0-1-2
			99	0-2-4
			74	0-2-0
			82	0-3-0
			85	0-0-18
			87	0-8-14
			93	0-5-6
			96	0-3-13
			98	0-1-16
			100	0-5-3
			79	0-5-9
			80	1-6-3
			81	0-5-8
			86	0-1-0
			90	0-1-3
			94	0-10-14
			76	0-1-0
			77	0-12-18
			78	0-2-14
			89	0-6-0
			91	0-16-3
			95	0-9-0
			101	0-8-2
			71	1-2-16
			72	0-8-11
			308/1	4-18-0
			15	0-12-10
			14	0-11-7

16	0-15-15
13	1-2-16
10	0-1-16
11	1-8-0
12	0-3-17
8	1-5-2
9	2-18-8
किता - 40	22-16-11 बिघा

आदेश द्वारा,
हस्ताक्षरित / -
प्रधान सचिव (विद्युत)।

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 25th August, 2014

No: Sharm (A) 7-1/2005 (Awards) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No:	Title of the Case	Date of Award
1	124/2011	S/Shri Parmjit Singh V/s Vice Chancellor, CSK HPKV.	30-06-2014
2	Sep-11	Pradhan Him Shakti PWD V/s EE. HPPWD Baijnath.	30-06-2014
3	43/2011	Gen. Secy. Anagan Vanaspati Workers Union V/S G.M. Suraj Industries.	30-06-2014
4	133/2013	Kashmir Singh V/S M/s Sonalika International Car & Motors.	7/7/2014
5	79/2014	Parma Ram V/S EE I&PH.	9/7/2014
6	52/2013	Baldev Raj V/s Gram Panchyat Sihund	19-07-2014
7	267/2012	Jagdish Kumar V/s Lal Chand Sharma.	21-07-2014
8	109/2014	Kalawati V/s M/S Terrace Pharmaceuticals.	24-07-2014
9	202/2012	Sunil Kumar V/s RE HPSEB Bassi Power House.	24-07-2014

10	147/2013	Prem Kishore V/s Chairman MG Group of Institute Badhu.	25-07-2014
11	150/2013	Pankaj V/s -do-	25-07-2014
12	174/2013	Amit Kumar Sharma V/s -do-	25-07-2014
13	149/2013	Jai Krishan V/s -do-	25-07-2014
14	173/2013	Hoshiyar Singh V/s -do-	25-07-2014
15	175/2013	Manohar Lal V/s -do-	25-07-2014

By order
(R. D. DHIMAN)
Pr. Secretary (Labour & Employment).

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 124/2011
Date of Institution : 16-11-2011
Date of Decision : 30-06-2014

Sh. Paramjeet Singh s/o Shri Badan Singh Pathania, r/o Village & Post Office Malnoo,
Tehsil Palampur, District Kangra, H.P. . .Petitioner.

Versus

The Vice Chancellor, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva
Vidyalya, Palampur, District Kangra, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Paramjeet Singh s/o Shri Badan Singh Pathania daily wages worker by the Vice Chancellor, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. w.e.f. April, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to

what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employer?"

2. After receiving the reference, notices were issued to the parties. The petitioner has filed the statement of claim by alleging that the services of the applicant was engaged by the respondent on daily rated basis w.e.f. May, 2004 and he had worked under the supervision of Scientist in Agriculture Engineering Department up to 31-03-2010. It is alleged that during this period, he worked without any break, though, he was not given any appointment letter by the respondent. It is alleged that the services of the applicant have unlawfully been terminated by the H.O.D. of the Agriculture Engineering Department w.e.f. 01-04-2010, through verbal orders, whereas he was not given any show cause notice against his alleged misconduct. Neither any enquiry was conducted nor one month notice pay, in lieu of the notice under Section 25-F(a) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for short) paid to him. It is alleged that no compensation under Section 25-F(b) of the Act was paid to him. Therefore, the termination is null and void. It is alleged that during his services as daily wages worker, he was paid the daily rate as fixed by the State Government from time to time, as per Minimum Wages Act, 1948. He was not given any attendance card and identity card as per the direction of the Government. It is alleged that at the time of his illegal termination, respondent has not followed the principle of 'Last Come First Go', whereas 50 junior persons have been retained in service in violation under Section 25-G of the Act. The applicant being the member of the Union, served the demand notice to the respondent on 04-01-2009 and 09-07-2009, wherein at demand number 10, Union had clearly mentioned that during the pendency of the dispute, the services of the workmen may not be terminated. But his services were terminated and there has been violation of Section 33-A of the Act. It is alleged that the respondent has terminated the services of the petitioner during the pendency of earlier demand notice, which is unfair labour practice. Hence, the applicant has prayed that the aforesaid termination be set aside and he should be given full back wages, seniority and reinstatement.

3. The respondent appeared to contest the claim by filing the reply, in which the respondent had taken preliminary objections regarding maintainable, cause of action, jurisdiction, non-joinder and mis-joinder of the necessary parties and that the applicant has not approached the Court with clean hands. It is also alleged that the similar petition is pending before this Court titled as Pradhan Sachiv, HP Krishi Vishvavidyalya Mazdoor Sangh Vs. Registrar, CSK Agriculture University, Palampur. It is further alleged that the petitioner never worked under the respondent. The duties, if any, performed by the applicant were for a particular project on seasonal basis and the funding agency of the same is different. It is alleged that the applicant never worked against any sanctioned post under the respondent. Therefore, the respondent is not liable for giving any kind of relief for the applicant. On merits, it is denied that the applicant is daily paid worker of the University. It is denied that the applicant was employed as daily paid labour by the competent authority. It is alleged that the seniority list of daily paid labour have been maintained by the competent authority, in which the applicant does not figure. It is denied that the applicant is member of the Union, which union is of daily wages worker of the University employed on muster roll. The respondent has prayed for rejection of the claim petition.

4. In the rejoinder filed by the petitioner, he has asserted his own case and denied that of the respondent.

5. On 19-07-2012, the following issues were framed:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. April, 2010 is illegal and unjustified as alleged? OPP.
2. Whether the petitioner has a cause of action? ...OPP.

-
3. Whether the petition is not maintainable in the present form ? ...OPR
 4. Whether the petitioner has no locus-standi to sue? ...OPR
 5. Whether this Court has no jurisdiction to hear and decide the matter? ...OPR.
 6. Whether the petition is bad for non-joinder of the necessary parties. If so, its effect? ..OPR.
 7. Whether the petitioner has not come to the Court with clean hands. If so, its effect? ..OPR.
 8. Relief.
6. I have heard the ld. AR/ counsel for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : Not pressed

Issue No.6 : Not pressed

Issue No.7 :Yes

Relief : Reference answered against petitioner.

REASONS FOR FINDINGS

ISSUES NO. 1.

8. The petitioner has claimed that he was daily wage worker and his services were wrongly terminated by the respondent without complying with the provisions of under Section 25-F and 25-G of the Act. The respondent on the other hand alleged that the petitioner was never appointed as daily wages worker and he was doing work under specific project as seasonal worker.

9. To prove his claim, the petitioner has appeared as PW1 and filed his affidavit Ex.PW1/A, in examination-in-chief, by asserting the facts as pleaded in the statement of claim. He has stated that he was engaged as daily rated basis w.e.f. May, 2004 up to 31-03-2010 in Agriculture Engineering Department. He has claimed that he was not given any appointment letter and the services of the applicant have wrongly been terminated by the H.O.D. of the Agriculture Engineering Department w.e.f. 01-04-2010 by verbal order. In his cross-examination, he has admitted that he has filed one another case through his union which is reference No. 207/2010, pending before this Court. He has admitted that he has moved an application in that reference alleging the change of service condition. He has admitted that in that application, the compromise was entered into and they were asked to join the duties through the contractor. He has admitted that no appointment letter has been given to him. He has also admitted that the university maintains the seniority list of daily wage workers, in which his name does not figure. He has not been appointed

through employment exchange. But he has stated that he was kept by Head of the Department in Agriculture Engineering Department for one project. He has admitted that he used to work in the department as seasonal worker. He has denied that he has got payment through contractor. He has again joined university through contractor from July, 2011. He has denied that he was not employee of the university.

10. In rebuttal to the evidence of the petitioner, the respondent has examined RW1 Dr. S.P. Sharma, Director of Research, who has filed affidavit ExRW1/A has claimed that the petitioner was not a daily wage worker, as he was never engaged as daily wage worker by the competent authority i.e. Vice Chancellor and Registrar. He has stated that the Research Scientists engage seasonal workers for various research projects, funded by different agencies. But in no project, the number of workers ever exceeded twenty. He has stated that the petitioner has filed reference titled as Pardhan, Sachiv, HPKV Mazdoor Sangh vs Registrar, CSKHPKV, which is pending before this Court (since withdrawn, as submitted during arguments). He has also stated that all the powers with respect to utilization of the research grant available for a particular project, rest with the Principal Investigator/Research Scientists as per annexure R-1. He has stated that the muster-roll of daily wages was maintained by the Administrative office of the university and they also prepare seniority lists Annexure R-2/ExRW1/D and Annexure R-3/ExRW1/E, issued on 4th October, 2007 and on 25th May, 2009 respectively. He has also claimed that the petitioner was never engaged in sanctioned post in University. He has further stated that the projects are sanctioned for a specific period and labours used to work whenever the seasonal agricultural work and projects are available. In his cross-examination, he has stated that no appointment letter was issued to the petitioner and he was only seasonal worker in project. He has admitted that the petitioner was paid minimum wages whenever he was engaged. He has denied that they have wrongly terminated the services of the petitioner on 01-04-2010. He has stated that the petitioner is working under the contractor with university and they had employed labour as per order of this Court (Ex. P-B). He has stated that all the projects are under him as Director of Research. He has stated that the employees of the university are issued muster-roll and their seniority list is also maintained. He has stated that the petitioner is not the employee of the university and his muster-roll is not issued.

11. The Respondent has also examined RW2 Dr. D.K. Vatsa, Head, Department of Agricultural Engineering. He has filed the affidavit in examination-in-chief, Ex. RW2/A, by asserting the petitioner is not daily paid worker. He has stated that the Principal Investigators has all the powers of utilization of the grant as per the annexure R-6. He has stated that the university have not given any appointment letter and muster-roll. He has stated that the seasonal work is being got done from the recurring contingency, provided in the Research Projects, through contract labour. He has also stated that the service of the applicant was never terminated and he is working in the Department of Organic Agriculture. He was made payments through receipts Ex. RW2/C to Ex. RW2/F. In his crossexamination, he has stated that in the Engineering Department, 30 to 40 people were employed by the university on regular basis. He has stated that the number of daily paid workers depend on projects basis and only 2-3 people work in one project. He has stated that at this point of time, four main projects are running. He has stated that one registered contractor, New Vision Shimla, supplied labour to the project, as a contractor. He has denied that the petitioner was wrongly terminated.

12. On the basis of the above evidence, it has been submitted on behalf of the petitioner that his services were terminated w.e.f. 2010 illegally. But it the submitted on behalf of the respondent that the petitioner was not in the regular service of the respondent and has never appointed against permanent post on daily wages basis. Therefore, he was a seasonal worker and cannot claim that his services should be regularized.

13. After hearing the parties and after going through the record, it appears the petitioner has not been able to prove that he was appointed as a daily wage worker by the respondent. The petitioner has admitted in his evidence that the respondents have been carrying out the seniority list, some of which have been filed by the respondent. The petitioner admitted that his name did not find mention in those seniority lists. But he has not given any reason that in case he was a daily wages worker and his name was not there in the seniority list, then, why he did not agitate the matter at the earliest and challenged the seniority list. It has been specifically stated on behalf of the respondent that the seniority list contains names of all daily wage workers working in the respondent university. Furthermore, the petitioner has himself admitted that he had been engaged in the Agriculture Engineering Department in the project and he used to seasonal work in the department. These admissions on the part of the petitioner do not prove that he was a daily wage worker on the Rolls of the respondent. Had the petitioner been the daily wage worker, he must have been engaged on muster-roll. But the petitioner is not daily wages work. Therefore, he was not engaged on muster-roll. The payment record Ex.RW2/C to Ex.RW2/F filed by the respondent also does not show that the petitioner was a daily wage worker. The petitioner had signed the receipt as contractor. Keeping in view the admission of the petitioner that he worked as a seasonal worker, he cannot turn around and claim to be a daily wage worker.

14. The petitioner has also claimed that he worked without any breaks in the university. But no record has been filed by the petitioner to prove that he had worked with the university from 2004 to 2010 without any breaks. Had he been engaged as a daily wages worker, then his name would have occurred in the seniority list and muster-roll must have been issued in his name. The petitioner had not called such record to prove his case and in view of his admission as seasonal worker, he is not proved to be daily waged worker. For proving that the petitioner was a workman and entitled to protection of the Industrial Disputes, Act, 1947, he was to prove that under Section 25-B he had worked continuously for a period of 240 days in the calendar year. But without there being any evidence, the submission made on behalf of the petitioner has to be rejected. In Range Forest Officer vs. S.T. Hadimani, 2002 SCC (L&S) 367, it was held by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

15. The Id. csl. for the petitioner has referred to the judgments titled as M.C.D. vs. Narender Kumar 2007 LLR 1277 (Delhi) relating to daily wage worker; Nar Singh Pal vs. Union of India 2000 LLR 577 (SC) relating to temporary employee; Block Development Officer, Pragpur vs. Yoginder Kumar, 2008 LLR 763 (HP) where the worker was engaged as daily wager on muster – roll; Div. Manager, New India Assurance Co. Ltd. vs. A Sankaralingam, 2008 LLR 1214 (SC) which was the case of part-time sweeper; Tanuku Municipality vs. S. Venkateswara Rao, 2001 LLR 178 (A.P.) relating to casual labour; Poeroorkada Service Co-Operative Bank vs. Sheena, 2002 LLR 1104 (Kerala) relating to daily wagers; Himachal Pradesh State Electricity Board vs. Laxami Devi, 2011 LLR 52 (HP) relating to part time employee. However, the above judgments, with due respect, do not advance the cause of the petitioner. Because, the petitioner admitted that he was 'seasonal worker' and he cannot claim to continue the work of the university, unless the work was available and called to do the seasonal work. In this case, the petitioner has not shown that he has appointed as daily wager on muster roll of respondent university.

16. The Id. csl. for the petitioner has further referred to North East Karnataka Road Transport Corporation vs. M. Nagangouda 2007 LLR 340 (SC); Jaipur Vidyut Vitran Nigam Ltd vs. Nathu Ram 2010 LLR 97 (SC) and Steel Authority of India Ltd., Branch Office, Coimbatore (represented by its Branch Manager) vs. 1. Presiding Officer, Labour Court, Coimbatore 2. E. Bhadra Rao 2003 LLR 1166 (Madras) and argued that full back wages should be given to the

worker to reinstatement. The petitioner in the present case has not proved that he was regular or daily wages worker so that he can be ordered to be paid full back wages, as claimed. Therefore, with due respect, the above authorities are not applicable to the facts of the present case.

17. He has further referred to B.P. Singh and Arun Kumar, Ji, Shahaji vs. Executive Engineer, PWD, 2007 (115) FLR 675 (SC), in which there was delay of several years in filing the claim. However, in this case the respondent has not taken the plea of limitation.

18. He has further referred to District Basic Education Officer vs. Dhananjai Kumar Shukla, 2008 (116) FLR 728 (SC), in which it is held that when the facts stands admitted, the same need not to be proved. This authority goes against the petitioner himself. Because the petitioner himself admitted that his service was engaged in a project and he was during seasonal work. These facts admitted by the petitioner go against him and now he cannot claim the status of daily wage worker.

19. The petitioner has also referred to Harmohinder Singh vs. Kharga Canteen, Ambala Cantt, 2001 LLR 849 (SC), in which case the services of the workman were terminated on completion of contractual period. Therefore, it was held that it did not amount to retrenchment and provisions of under Section 25-F of the Act did not apply in such a case. The petitioner has also referred to Bhogpur Co-Operative Sugar Mills Ltd. vs. Harmesh Kumar, 2006 (111) FLR 1202 (SC), in which it was held by the Hon'ble Supreme Court that the termination of services of a workman as a result of non-renewal of the contract of employment on its expiry, would not attract the definition of the term 'retrenchment'. These authorities, with respect, do not help of the petitioner.

20. The petitioner has further referred to M/s Bharat Heavy Electricals Limited vs. State of Uttar Pradesh, 2003 LLR 817 (SC), in which, it was held by the Hon'ble Supreme Court that 'non production of records pertaining to payments made to the gardeners either by the Company or the contractor will lead to drawing of adverse inference in establishing direct relationship of 'employer and employees between the principal employer and the workers alleged to be engaged by the contractor'. In this case, the respondent had produced the record of payment made directly to the petitioner, but the petitioner himself has not produced any record to prove that he was a daily wages worker. Therefore, the adverse inference has to be drawn against him.

21. The petitioner has further referred to Director of Agriculture vs. Dev Raj, 2006 LLR 1019 (HP), which dealt with the change of service condition of the petitioner under Section 9A of the Act. But, in the present case, there was no change of service condition of the petitioner. Therefore, this judgment, with due respect, is not applicable to the facts of this case.

22. The petitioner has further referred to Employers in Relation to Management of Sudamdth Colliery of M/s Bharat Coking Coal Ltd., Dist. Dhanbad vs. The Presiding Officer, Central Govt. Industrial Tribunal No.1, Dhanbad, 2000 LLR 100 ; Barat Fritz Werner Limited vs. State of Karnataka, 2001 LLR 285 (SC); Hindustan Petroleum Corporation Ltd., Mumbai vs. Presiding Officer, Central Government Labour Court-cum- Industrial Tribunal, Chennai, 2009 LLR 75; International Airport Authority of India vs. International Air Cargo Workers' Union, 2009 LLR 923 (SC); Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165; Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma(Dead) by L.Rs, 2011 (131) FLR 759 (SC) and Delhi International Airport Pvt. Ltd. vs. Union of India, 2011 (131) FLR 776 (SC), which authorities deal with the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of Contract Labour (Regulation and Abolition Act, 1970. But, in the present case, the provisions of Contract Labour (Regulation and Abolition Act, 1970 are not in issue nor any reference has been received regarding this point. The

petitioner has not claimed that he was appointed through any licensed/ unlicensed contractor, so that he can be considered to be employee of the employer directly, instead of the contractor. But this matter is not in a dispute in this reference. Therefore, with due respect, the above authorities are not applicable to the facts of the present case.

23. On the other hands, Id. csl. for the respondent has referred to the judgment in Civil Appeal No.7463 of 2009 (Arising out of SLP(c) No.14117 of 2008) titled as Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda, decided on 09-11-2009, in which it has been held by the Hon'ble Supreme Court that where a workman is employed for a seasonal work or temporary period, the workman cannot be said to be 'retrenched' in view of the provisions of Section 2(o)(bb). It was also held that the burden of proof is on the worker to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. Therefore, keeping in view the facts that the petitioner himself admitted to be doing the seasonal work, he cannot claim that he was 'retrenched'. It was to be proved by him that he had worked for more than 240 days, which facts have not been proved by the petitioner.

24. The respondent has also relied on Industrial Paper (Assam) Ltd. Emps. Union vs. Management Assam Industrial Dev. Corpn. Ltd., Appeal (Civil) 7990 of 2004, decided on 10-01-2007, wherein the workers had been appointed for a specific project. Therefore, on its conclusion, they were held not entitled for continuation. It was held by the Hon'ble Supreme Court that there is ample material on record to show that employment was for a specific project and on an expiry of that project, the question of any claim to be appointed by IPAL much less by AIDC does not arise.

25. The respondent has also relied on Best Workers Union vs. State of Maharashtra, AIR 2010 (SC) 3463, wherein the worker was engaged as French Translator for a project. It was held by the Hon'ble Supreme Court that the service of appellant as French Translator has been dispensed with as no project in French speaking country is with the IRCON. In the face of it, the action of the IRCON in dispensing with the services of the appellant cannot be said to be illegal or arbitrary.

26. The respondent has also referred to Union of India vs. Kartick Chandra Mondal, AIR 2010 (SC) 3455, wherein casual workers were neither appointed as per proper procedure nor through employment exchange. Therefore, it was held that the worker earlier regularized cannot be the base for further appointment of such candidates. In the present case also the petitioner has not shown that the post in which he was appointed in project was advertised through employment exchange and proper procedure was followed. Therefore, the above authorities are applicable for the present case also.

27. In view of the above evidence and the case law cited at Bar, it appears to this court that the petitioner has not shown that he was daily wage worker engaged by the respondent, but by his own admission, he was a 'seasonal worker'. Therefore, no muster-roll was prepared regarding his work and his name also does not figure in the seniority list of daily wagers maintained by the respondent. The petitioner has not challenged the seniority list for not figuring his name in it. Therefore, it has to be concluded that the petitioner is not a daily wage worker. But being a seasonal worker, he cannot claim that his services were retrenched. Hence, my findings on the issue No.1 is in negative, against the petitioner and in favour of the respondent.

Issue No. 2.

28. In view of my findings of the Issue No.2, it appears to me that the petitioner has no cause of action and has not proved to be a daily wages worker of the respondent. Therefore, being a seasonal worker, he cannot claim his alleged retrenchment was legal. Because he was being engaged for a seasonal worker under specific project. Therefore, he has no cause of action. Hence, my findings on the issue No.1 is in negative, against the petitioner and in favour of the respondent.

29. In view of my findings on the above issues, it appears to me that the present petition is not maintainable. Because, the petitioner has not been shown daily wage worker. Thus, the petitioner has not come to the Court with clean hands. The petitioner admitted in his evidence that he was a seasonal worker. But he claimed his status to be that of daily wage worker. Had he been daily wage worker, he would have proved to be given the work under muster-roll and his name would have figured in the seniority list of daily wage worker. He has not challenged the action of the respondent in not issuing the muster roll and not including his name in seniority list. This fortifies the claim to the respondent that the petitioner was seasonal worker and not daily wages worker. Therefore, he could not maintain the petition. Hence, issue No. 3 is decided in the affirmative, in favour of the respondent and against the petitioner.

30. In view of the above discussion, it was held that the petitioner has not come to the Court with clean hands. Therefore, he is not entitled to any relief. Hence, issue No. 7 is decided in the affirmative, in favour of the respondent and against the petitioner. Both these issues are decided accordingly.

Issue No. 4.

31. Once the petitioner is not proved to be daily wage worker, then he has not locus-standi to challenge any action of alleged retrenchment, which was never there. The petitioner has not proved that he was retrenched in any manner from his daily wage service. Because, he was a seasonal worker, therefore, he has not having locus-standi to pursue the matter. Hence, my findings in the above issue in affirmative and in favour of the respondent and against the petitioner.

Issue No.5 & 6.

32. No specific submissions have been made on behalf of the respondent on these issues. Rather these are not pressed. Therefore, the above issues are decided as not pressed.

RELIEF

33. In view of my findings on the issues above, the reference is accordingly answered against the petitioner. The petitioner is not held entitled to any relief. He is not held to be the daily wage worker of the respondent. Therefore, there is no question of regularization of his service in any manner.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File after due completion be consigned to the Record Room. Announced in the open Court today this 30th day of June, 2014.

(J. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF J. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 09/2011
Date of Institution : 31.03.2011
Date of Decision : 30.06.2014

Pradhan, Him Shakti P.W.D. (B.M.S.) Sub Division Jai-Singhpur, Distt. Kangra, H.P.

. .Petitioners

Versus

The Sr. Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, H.P. ..Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether demand notices dated -12.8.2010 & 05.9.2010 served by the Pradhan, Him Shakti P.W.D. (B.M.S.) Sub Division Jai Singhpur, Distt. Kangra, H.P. before the Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, H.P. to consider the period of fictional breaks given to 31 workmen as per “Annexure-A” (Copyenclosed) towards continuity in their service from the date of their initial appointment till September, 2007 when they were given work in continuity and to regularise them alongwith seniority in service is legal and justified? If yes, to what service benefits, seniority and relief the above workmen as per Annexure –A are entitled to from the concerned employer? If not, what are its legal effects?”

2. After receipt of the reference, the notices were issued to the parties. The petitioner appeared through Authorized Representative and filed statement of claim on behalf of the petitioner. It is averred that Him Shakti PWD Karamchari Sangh is a registered trade union and affiliated with Bhartiya Mazdoor Sangh. It is also averred that its members are working in various Divisions of HPPWD. The President of branch at Jaisinghpur is competent to file the claim petition on behalf of the petitioners. It is further averred that the petitioner union has raised their demand by a notice to the Executive Engineer, HPPWD, Baijnath and all the 31 workmen, who are working under the Assistant Engineer, Sub Division Jaisinghpur has been shifted to newly created Division Balakrupi Division. It is alleged that all the 31 workmen had been engaged by the Executive Engineer, Baijnath on various dates as given in the statement of claim. It is averred that all these workmen worked under the Assistant Engineer in the different years, on daily wage basis. No appointment letter was issued at the time of their engagement, but they were given muster rolls only for 15 days of every month and they were given fictional breaks from 16th day of every month to the end of the month, which practice was continued by the respondent/department from the initial engagement of the petitioners till September, 2007. It is alleged that the said fictional breaks

had been given to all the petitioners with malafide intentions, so that they could not complete 240 days of work in a year and they may not be granted work charge/regular status after completion of 10 years of service, which period was subsequently reduced to eight years. It is alleged that the persons junior to the petitioners were however kept on daily wage basis at Divisional level at Baijnath Division and engaged continuously without any break, which amounts to unfair labour practice under Section 2 (ra) read with fifth schedule in clause 4 (d), clause 6, clause 9 and also deprived them of permanent status in clause 10 of the fifth schedule of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The respondent has therefore violated the provisions of Sections 25-T and 25-U read with Sections 29 and 32 of the Act. It is averred that the petitioners had been given regular work only after October, 2007, whereas, the other workers in Baijnath Division were not given fictional breaks by the Executive Engineer, who were Anil Kumar, (1998), Pink Raj (1999), Anil Kumar (2000), Raj Kumar (2001), Harbans Lal (2002), Sunil Kumar (2003), Kundan Lal (2003), Kanta Devi (2004), Piar Chand (2005), Tilak Raj (2006) and Vinod Kumar (2007). It is alleged that the respondent had also violated the principle of 'last come first go'. Therefore, all the workers engaged in Jaisinghpur Sub Division on daily wages, be considered for their regularization in the regular pay scale of beldars and masons and they be also paid the arrears of the pay. The statement of claim was subsequently amended by the petitioners, whereby the name of one Bakshi Ram was deleted and the name of one Ranjit Singh inserted on the ground that he had already raised the dispute and authorized the Legal Advisor of BMS/AR, who filed the claim in his behalf and whereas Bakshi Ram has raised demand already pending before the appropriate Government. Therefore his name is to be struck off. This application was allowed by my ld. Predecessor.

3. After appearance, the respondent filed the reply, in which the facts, as pleaded by the petitioners, have not been disputed, except that it is denied that the illegal / fictional breaks were given to all the petitioners. It is denied that the respondent had given fictional breaks or breaks of 15 days to the petitioners. But due to paucity of the funds and works w.e.f. April, 2000, the respondent was not in a position to provide work to the workmen for whole of the month and the workmen were duly apprised about the non- availability of the work and funds. Therefore, they could provide work only for 15 to 20 days in a month till September, 2007. However, during the above period and also as per the availability of the funds, the work for whole month was also provided sometimes as per the mandays chart Annexures –R-1 to R-31. It has denied the malafide intention on its part. It is averred that some workers who were not given break, were engaged in Sub Division, Baijnath, whereas the present petitioners were engaged in Sub Division, Jaisinghpur, which is now in Balakrupi Division and distance between Jaisinghpur and Baijnath is 44 kilometers and as per the mandatory provisions of the Act and the Rules framed there under, the services of the workmen could not be regulated beyond eight kilometers. Therefore, the petitioners were not entitled for regularization, as prayed for. In all, the respondent has denied the case of the petitioners and prayed for the rejection of their claim. The respondent had filed amended reply after amendment of statement of claim and similar averments have been made.

4. In the rejoinder, the petitioner have asserted its own case and denied all the averments made by the respondent.

5. On 28.11.2013, the following issues were framed:

1. Whether the respondent had been giving fictional breaks to the petitioner till September, 2007 by offering them muster-roll only 15 to 16 days every month, as alleged. If so, to what relief the petitioner is entitled to? . .OPP
2. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Partly Yes

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner has challenged the action of the respondent in giving fictional breaks to 31 workmen as per list Annexure –A till September, 2007, though, thereafter, they were given work for 240 days per year. But the service rendered by the workmen prior to that was not counted for their seniority etc. But the respondent has contested this claim by alleging that no fictional breaks had been given, but it was necessitated by the circumstances.

9. The petitioner has examined PW-2 Ranjit Singh, whose reference was received subsequently. He has stated that he had been working as a daily wage worker since 1.5.1998, though, he was not given any appointment letter. He has also claimed that he had not been given muster roll for full month so that he could not complete 240 days of work till September, 2007. However, after October, 2007, the muster roll for whole month has been given to him. In his cross-examination, he has admitted that the breaks were being given from the year 1999. He has denied that the workers used to report for duty at their free will and the some of them used to remain absent. He has denied that due this fact, he could not complete 240 days of work. He has denied that the respondent had not intentionally given breaks to him. He has denied that he was also told by the department about the paucity of the work and the budget, due to which reason he was given muster roll only for 15-20 days. He could tell that whether Anil Kumar etc. are working in Baijnath Sub-Division and they worked regularly. He has admitted that he joined the duty in HPPWD Sub Division Jaisinghpur.

10. The petitioners has also examined PW1 Gurbachan Singh, Vice President of the Union, who has filed his affidavit Ex. PW1/A in examination-in-chief, in which he has asserted that the facts as pleaded in the statement of claim. This witness has claimed that the workers were initially engaged and then disengaged by giving them fictional breaks every month for 10 to 15 days from the date of their respective initial appointment to September, 2007. He has claimed that the breaks were given deliberately and knowingly by not letting them to complete 240 days in a calendar year, so as to deprive them for permanent status for the purpose of their regularization. It is also claimed that the some other workers namely Anil Kumar, (1998), Pink Raj (1999), Anil Kumar (2000), Raj Kumar (2001), Harbans Lal (2002), Sunil Kumar (2003), Kundan Lal (2003), Kanta Devi (2004), Piar Chand (2005), Tilak Raj (2006) and Vinod Kumar (2007), who were junior to the 31 workers, were not given fictional breaks and they have been given the seniority etc. in violation of the principle of 'last come first go'. However, in his cross-examination, PW1 has denied that the breaks had been given from April, 2000 onwards. He could not tell that the department had issued the muster roll during the period when the breaks were given. He has denied that the workers had themselves absented during the years 1998-1999 and no breaks were given by the department. He has denied that due to the paucity of budget, the department could not issue muster roll after April, 2000. He has admitted that when the department started giving the breaks, the union did not take any action and they raised the dispute only in the year 2008 and 2009. He has admitted that as per the Rules, the daily wage workers cannot be sent outside eight kilometers of the work place. He has admitted that Jaisinghpur Sub Division is about 40 kilometers from Baijnath. He has admitted that all the 31 workers are still in service and they are being issued muster roll for full month after September, 2007. The petitioner has not filed any document in support of its case.

11. In rebuttal to the above evidence, the respondent had examined RW1 Sanjeev Kumar Sharma, Executive Engineer, HPPWD Division, Balakrupi. He had filed the record i.e. the mandays charts of the workers Exts. R-1 to R-31, pertaining to the years 1998 to 2000. He has stated that the department had provided the work for 240 days, but, they themselves absented from duty. He has stated that these workers are still working with them and their mandays charts are Exts. R-32 to R-62 and R-64. He has stated that after the year 2000 till September, 2007, due to paucity of the funds, they could not issue muster roll for the whole month and this fact was brought to notice of the workers and they have orally consented to it. He has stated that the Balakrupi HPPWD Division was created on 28.8.2010. Earlier, they were part of the Baijnath Division. He has stated that the petitioners are working in Sub Division Jaisinghpur. He has also stated that the workmen mentioned in Ex. R-63 are working in HPPWD Division Baijnath, against whom the claim was made by the petitioners, which is 40 kilometers from Jaisinghpur. He has stated that no fictional break was given intentionally to the workers. In his cross-examination, he has admitted that the seniority list of the daily wagers is prepared division-wise. He has admitted that the seniority list Ex. RA is of Baijnath Division. He has also stated that no appointment letter was issued to the workers. He could not tell whether in Jaisinghpur, they had prepared two batches of daily wagers and they were working in batches in the same month. He has stated that no break has been given to the workers and they absented from duty themselves. He has denied that they used to give work to juniors for the whole year. This is what the parties have led in evidence in support of their claims.

12. On the basis of the pleadings and the evidence, as discussed above, the question which arises for determination is whether the respondent had given fictional and illegal breaks in service to the workmen of the petitioner union from the date of their initial engagement till September, 2007 and whether that period has to be counted as continuous service of these workmen?

13. It has to be observed at the outset that it was for the petitioner to prove that the alleged breaks, given to 31 workmen from the date of their initial engagement till September, 2007, were fictional and illegal. Because, the Court will not presume simply on the allegations of the petitioner that the breaks given to the petitioners were fictional. This fact has to be proved by the petitioner by leading convincing and cogent evidence. But, except by making oral statement, no record has been filed proved by the petitioner to prove this fact. The respondent has tried to prove that these daily waged workers were issued muster rolls, whenever the works were available. After all, the money was to be spent out of the State Exchequer, which is public money and the State cannot be forced to spend it throughout the month, even if no work was available in the Sub-Division. Therefore, in this view of the matter, it cannot be said that the breaks given in particular month was fictional and this arguments has to be rejected.

14. The Ld. AR for the petitioner has also submitted that as per the provision of Section 25-B of the Act, the respondent had to provide the work to the workmen for atleast 240 days in a year. However, after going through the provisions of Section 25-B of the Act, it is nowhere provided that the department shall provide minimum of 240 days of work to the workmen. As stated earlier, the work has to be provided when available. Though, it can be said that the department is at liberty to regulate the workers in a way so that they may complete minimum 240 days as prescribed in this Section and may not engage new labourer, which may violate the provisions of Section 25-H of the Act, which contains the principle of 'last come first go'.

15. As noted earlier, the petitioner has not led any evidence worth the name to prove that the respondent had violated any other provision of the Act. However, the mandays chart filed by the respondent Exs. R-32 to R-62 and R-64 shows that the workmen were engaged from the year 1998 onwards and they worked till the year 2007 and they did not work for 240 days per year. It is only in the year 2008 that all these workmen have worked for more than 240 days. The petitioner has contended that the respondent had regularized the services of the workers, who were employed

later on, as mentioned in para 6 of the statement of claim. But the respondent has contended that the seniority list of these labourers is Annexure R-63, which pertains to Sub Division Baijnath and the 31 labourers being represented by the petitioner were employed in Sub Division Jaisinghpur. It has been specifically pleaded by the respondent in the reply that since these 31 labourers, being the daily wage workers, could not be employed outside eight kilometers of the work place, as per the mandatory provisions of the Act and Rules, whereas the Baijnath Division is about 44 kilometers from Jaisinghpur. The petitioner had examined PW1 Gurbachan Singh, Vice President of the union, who has specifically admitted the suggestion that the daily waged worker cannot be sent outside eight kilometers of the work place. This shows that the 31 workers being represented by the petitioner could not have been employed in Baijnath Division and different labour was engaged there, being beyond eight kilometers of areas of work place. Therefore, the labourers employed in Baijnath Sub Division cannot be said to be junior to the 31 labourers represented by the petitioner for the purpose of section 25-H of the Act. So, the petitioner cannot claim that the 31 labourers should have been employed in Baijnath also for making their work days at 240.

16. The respondent has filed the seniority list annexure RA which is a combined seniority list of Baijnath and Jaisinghpur Sub Divisions. It may be noted that the petitioners has not specifically mentioned that which of the 31 labourer was beldar or mason. However, the mandays chart shows that out of 31 labourers, only Kishori Lal and Pritam Chand were mason and rest of them were labourer. The seniority list Ex. RA does not show that any mason was given 240 days of work in Jaisinghpur Sub Division from the year 1998 onwards. However, the seniority list shows that one Labourer Kundan Lal was employed in the year 2003 in Jaisinghpur Sub Division and he has been given more than 240 days of work per year, without any explanation. He has also been shown as daily wager in the seniority list. The respondent should have explained this position as to how this particular labourer was given more work. Therefore, to my mind it is appear that thought the 31 labourers represented by the petitioner cannot claim seniority etc. from the date of their initial engagement. But, it can be said that if Kundan Lal can be given work for 240 days from the year 2003 onwards, then these 31 workmen could have considered for such works and they should have also been given 240 days work in a year from 2003 onwards. Therefore, it has to be held that the breaks given from the year 2003 onwards can be said to be fictional and they should have been given the work, as given to Kundan Lal, who engaged lateron by the respondent. Therefore, the 31 workers can at best be presumed to be in continuous and uninterrupted service of the respondent for more than 240 days of work per year from the year 2003 and onwards. Therefore, the breaks given for the year 2003 and onwards shall have no effect in their seniority and they be deemed to be in continuous service of the respondent. This issue is decided partly in favour of the petitioner and against the respondent.

RELIEF :

17. In view of my findings on issue No.1 above, the petition succeeds in part and the same is partly allowed. The breaks given from the year 2003 onwards to the 31 labourers represented by the petitioner shall be deemed to have worked for 240 days without any break and the fictional breaks given are held to be wrong, illegal and discriminatory, in view of the work given to Kundan Lal, daily wager from the year 2003 onwards for more than 240 days a year. Therefore, the 31 labourers as per Annexure A, shall be entitled to seniority and continuity in service from the year 2003 onwards, except back wages. These workers shall be considered for regularization by the respondent as per the policy governing the daily wagers, as framed by the State Government and operative from time to time. In the peculiar facts of the case, the parties shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room. Announced in the open Court today this 30th day of June, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 43/2011
Date of Institution : 03.05.2011
Date of Decision : 30.06.2014

General Secretary, Angan Vanaspati Workers Union (Regd.), Q. No.2, Block No.11,
Sansarpur Terrace, Distt. Kangra, H.P. . .Petitioner.

Versus

The General Manager, M/s. Suraj Industries Ltd. Sansarpur Terrace, Distt. Kangra, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.C. Thakur, Adv.

For the Respondent : Sh. S. Kaushal, AR.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether the demands raised vide demand notice dated- 16.12.2009 (Copy enclosed) by General Secretary, Angan Vanaspati Workers Union (Regd.), Sansarpur Terrace, Distt. Kangra, before The General Manager, M/s Suraj Industries Ltd. Sansarpur Terrace, Distt. Kangra are legal, maintainable & justified? If yes, to what service benefits and relief the workmen of the factory are entitled to as per demand notice dated – 16.12.2009? If not, what are its legal effects?”

2. After receipt of the reference, the notices were issued to the parties. The petitioner has filed statement of claim through its General Secretary Mast Ram, (duly authorized by the Union to file the claim), in which it has averred that the Angan Vanaspati Workers Union is a registered trade union under the Trade Union Act, 1926, with Ravi Dutt, President and Mast Ram, General Secretary, who have been authorized to raise the demands on their behalf, as per resolution Annexure P1. It is averred that the respondent company, registered under the Companies Act, is having its registered office at Sansarpur Terrace, Distt. Kangra, H.P. It is averred that the services of the members of the union were engaged by the respondent in the year 1993-1994, onwards on various dates and posts. It is alleged that in view of the illegal and arbitrary acts of the

respondent/employer, the services of the members of the petitioner Union were terminated on 31.1.2005, contrary to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The Union, therefore, in its meeting dated 6.3.2005, passed a resolution for prosecuting their case. Thereafter, the President and General Secretary filed a Writ Petition No. 215/2005 in Hon'ble High Court of Himachal Pradesh titled as Ravi Dutt Sharma and another versus State of HP and others, for quashing the arbitrary settlement dated 31.1.2005 and for grant of consequential benefits. The Single Bench of the Hon'ble High Court allowed the writ petition vide order dated 16.5.2008, Annexure P3. The employer feeling aggrieved against the aforesaid order filed LPA No. 83/2008 titled as M/s Suraj Industries Limited versus Ravi Dutt Sharma and others, in which Hon'ble Division Bench of the Hon'ble High Court as per judgment dated 15.9.2009, set aside the aforesaid order of the Hon'ble Single Judge and left the parties to invoke the jurisdiction under the Act. Thereafter, the workers union held its meeting on 2.12.2008 and they passed resolution No.2 for raising their dispute before this Court. Thereafter, they submitted their demands to the Labour Inspector, Dehra circle, where the Conciliation Officer tried to settle the dispute and the matter was sent to the Labour Commissioner, Govt. of H.P. to adjudicate the present case. It is alleged that the respondent acted contrary to the provisions of Chapter V-B of the Act by putting the pressure on the workers by telling them that industrial unit was to be closed and forced the workers of the union to enter into a printed agreement as covered under the provisions of Section 18 of the Act, showing that the workers were willing and ready to leave the job and they have violated the provisions of Section 2(p), 25-N and 25-O of the Act. It is alleged that after the year 2001, the respondent had submitted the proposal to the appropriate Government for closure of the unit without any reasons, which was objected to all the petitioners and the permission was not granted as per Annexure P6. It is alleged that the respondent, thereafter, preferred another review application dated 27.5.2003, but the same was again withdrawn. It is further alleged that the respondent subsequently again filed an application for retrenching the 50 workers out of 141 workers, and as per order dated 12.2.2004, the government granted the permission for retrenching 32 workers only out of 141 workers. It is alleged that the workers had even entered into agreement with the management on 8.2.2004, whereby they agreed for not having their annual increment for a period of three years. This was done by the petitioners to take out the company from the financial crisis. But, despite this, the company had thrown the petitioners out by the illegal act on 31.1.2005, which are in violation of the provisions of Sections 25-O and 25-N of the Act.

3. The Respondent has filed reply, wherein it is averred that there is no union of workers of M/s. Suraj Industries Ltd. nor Shri Mast Ram, is General Secretary. It is admitted that CWP No.215 of 2005 was filed by the petitioner and after its decision, LPA had also been preferred by the respondent, which was allowed and the petitioners were asked to prefer the claim under the Act. It is alleged that the petitioners have created fiction with a view to keep litigation alive, as none of the persons, whose signatures are appearing in Annexure -P2, attended these meetings. Therefore, these documents are not genuine. It is alleged that none of the signatories of the workmen of the respondent were present on that day i.e. 2.12.2009. Therefore, the demand notice etc. was not competent. It is alleged that the signatories, whose signatures are shown in Form F, were not in employment of respondent and there was no relationship of master and servant. It is averred that no individual workman has raised the dispute till date, who left the service of their own accord by tendering resignation, which was accepted and the benefits admissible given to them. It is further averred that after withdrawal of the retiral benefits by workmen, these were deposited in their saving bank accounts. It is further alleged that LPA No.83/2008 was decided on 15.9.2009 and right was given to individual workmen to invoke remedy available to them under the provisions of the Act. No right was given to the union. It is further alleged that the factory of the respondent was not closed on 31.1.2005 as alleged. Therefore, the provisions of Chapter V-B are not applicable. It is further alleged that the respondent did not terminate the services of the employees on 31.1.2005. It is denied that the respondent acted contrary to the provisions of Sections 2(p), 25-N or 25-O of the Act. It is admitted that the respondent had moved an application for retrenching the 50

employees out of 141 in the year 2004, without understanding that the application was not maintainable. Therefore, the permission was not granted and the respondent did not retrench any employee. It is alleged that the respondent was facing financial crunch and made all sincere efforts to keep the factory operational. It is denied that the petitioners were forced to resign on 31.1.2005, as alleged. It is alleged that after the submissions of the resignation, the employees namely Mast Ram and Ravi Dutt submitted application for withdrawal of the provident fund, in which they specifically mentioned the factum of 'resignation' and withdrew the provident fund amount of their own. It is averred that as per the provisions of Section 2(oo), the voluntary retirement sought by workman is not falling within the definition of 'retrenchment'. It is denied that the respondent had established the industry for grabbing subsidies and other assistance. In all, the respondent has prayed for rejection of the claim.

4. In the rejoinder, the petitioner has asserted its own case and denial that of respondent.
5. On 29.6.2012, following issues were framed:

1. Whether the demands raised by the petitioner union vide demand notice dated 16.12.2009 are legal and justified as alleged? . . .OPP.
2. If issue No.1 is answered in affirmative, to what relief(s) the petitioner union and its members are entitled to? . . .OPP.
3. Whether Sh. Ravi Dutt Sharma and Sh. Mast Ram are the President and General Secretary of the petitioner union as alleged? . . .OPP.
4. Whether the reference is not maintainable in the present form? . . .OPR.
5. Whether the petitioner has the locus-standi to sue? . . .OPP.
6. Whether no industrial dispute exists between the parties as alleged. If so, its effect? . . .OPR.
7. Whether the individuals ceased to be workman in the years 2004 and 2005 as alleged. If so, its effect? . . .OPR.
8. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Yes

Issue No.6 : Yes

Issue No.7 : Yes

Relief. : Reference answered against the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1 AND 7

8. The dispute between the parties is that the petitioner allege that the respondent had retrenched the workman without complying with the provisions of Sections 25-N and 25-O. It is also alleged that their employer forced them to submit resignation, which action on the part of the respondent was illegal. On the other hand, the respondent had alleged that the workmen had left the job of their own and they were paid final compensation also. It is alleged that the workmen even withdrew the provident fund amount by filing the forms and no dispute was raised at that time. The factory was closed on 31.12.2006. Therefore, they are no more their workers.

9. In order to prove its case, the petitioner has examined PW1 Mast Ram, who has filed his affidavit Ex. PW1/A in examination-in-chief, by asserting the facts, as pleaded in the statement of claim. He has filed the Registration Certificate of their Union Annexure P1, Resolution dated 2.12.2009 Annexure P2. He has claimed that they had also challenged their retrenchment before the Hon'ble High Court of H.P. and the Hon'ble Single Judge allowed their Writ Petition No. 215/2005 as per order dated 31.1.2005 (Annexure-P3). But in LPA No. 83/2008, vide its order dated 15.9.2009, Annexure-P4, the Hon'ble Division Bench set aside the earlier order by holding that the Writ Petition was not maintainable. Therefore, they had raised the present dispute. He has also stated that the company had also pasted the notices in the company dated 21.12.2004 and 24.1.2005 as Annexures P-9 and P-10 by asking the employees to enter into an agreement as the factory being closed down. It is also stated that the industrial unit has been closed permanently on 14.1.2005 as per Annexure-P13. Therefore, their services were illegally retrenched and the factory closed even without the permission of the government and the provisions of Sections 25-N and 25-O of the Act had been violated by the respondent. This witness has also produced the Resolution dated 15.9.2010 Ex. PW1/B, Resolution dated 11.10.2011 Ex. PW1/C. In his cross-examination, he has admitted to have signed Exts. R-6, R-7, R-8 and R-9 regarding the submission of resignation and the receipt of gratuity etc. He has claimed that around 8.00 P.M., the gate of the factory was closed. But these facts were not written in the Writ Petition before the Hon'ble High Court. He has further stated that he received two cheques, which he had deposited in his account. He also admitted that he filled the form Ex. R-10 and withdrawn the provident fund and deposited the same in his account. He has denied that he has mentioned in the form that he has resigned from job. He has denied that they had not made any complaint to the Labour Officer from 31.1.2005 to 13.3.2005 and letter Ex. PW1/D is forged. He has admitted that one compromise was done which is Ex. R-11 entered between them when Shri Rajesh Katoch was President of the Union. He has stated that they have not received any letter from the respondent whereby they were retrenched, but volunteered, that there are only resignation letters. He has admitted that the President of Union Rajesh Katoch has also taken money from the factory and left the job. He has denied that they had voluntarily resigned and they were not forced to resign. He has admitted that the respondent/factory has been closed on 31.12.2006.

10. The petitioner has also examined PW2 Ravi Dutt Sharma, President of the Union, who has filed his affidavit Ex. PW2/A as examination-in-chief, in which he has asserted the facts as pleaded in the statement of claim. He has also claimed that by retrenching them, the respondent has violated the provisions of Sections 25-O and 25-N of the Act. He has also stated that no permission was taken from the government for closing down the industrial unit by the respondent. He has made the similar statement and relied upon the documents, as filed by PW1, this witness has filed documents i.e. Registration Certificate Ex. PW1/B, Demand Notice dated 2.12.2009 Ex. PW2/C, Copy of Judgment dated 16.5.2008 Ex. PW1/D, Copy of Judgment dated 15.9.2009 Ex. PW2/E, Demand Notice dated 16.12.2009 Ex. PW2/F, Copy of letter written to the respondent by the Labour Commissioner Ex. PW2/G, Letter dated 23.7.2003 Ex. PW2/H, Notices dated 21.12.2004

and 24.1.2005 Ex. PW2/I and Ex. PW2/J, Resignation Letter dated 31.1.2005 Ex. PW2/K, Letter dated 20.10.2011 Ex. PW2/L, Letter dated 29.7.2011 Ex. PW2/M, Order dated 12.2.2004 Ex. PW2/N, Letter dated 8.2.2005 Ex. PW2/O and Copy of information Ex. PW2/P. In his cross-examination, he stated that lastly he visited the factory on 31.1.2005 and on that day Rajesh Katoch was the President of the Union. He has admitted his signatures on Annexures R-15 to R-18, but claimed that he had signed the same in the night under darkness, gates were closed and police force was called. He has denied that he signed it of his own free will and taken money from the respondent. Though, he has admitted his having deposited the cheques in his account, which he had taken on 4.2.2005 and 7.3.2005. He had not reported the matter to the police or any officer regarding forcibly signing the record at the instance of the respondent. He has stated that all the workers had taken the cheques and signed the affidavit etc. He has stated that no complaint has been submitted by the worker anywhere regarding this fact. He has also admitted that an agreement was made i.e. Ex. R-11. He could not tell whether in the year 2009, when they raised demand notices, factory was not existing. He has admitted that besides Mast Ram, no other worker has filed any case in the Court. He has stated that they had filed the present case regarding the closure of the factory on 31.12.2006.

11. In rebuttal to this evidence, the respondent has examined RW1 Kanheya Kumar, Officer of Employees Provident Fund Organization, Kasumpti Shimla, who had produced the authority letter Ex. RW1/A and Form of Mast Ram Ex. RW1/B, Form of Ravi Dutt Ex. RW1/C regarding the payment already made to them. He has also filed the copies of statements Ex. RW1/D and Ex. RW1/E dated 31.3.2006 and 31.3.2007, which were submitted by the respondent. RW2 is Ashok Kumar, Senior Assistant from the office of Directorate of Labour and Employment. He has proved that the industry of the respondent was registered under Factories Act and licence Ex. RW2/A, was valid upto 31.12.2006. He has stated that after 31.12.2006, licence fee was not deposited. RW3 is Shri Deep Ram, Sr. Assistant from the office of Directorate of Labour and Employment. He has proved that there is Angan Vanaspati Mazdoor Union, whose constitution is Ex. RW3/A. In his cross-examination, he has admitted that the petitioner had taken the copy of the Constitution which was supplied in the year 2008. He has stated that the union had also submitted annual report in December, 2010, but there are no names of office bearer in the return.

12. The respondent has also examined RW4 D.K. Sharda, who working as Manager Accounts in the respondent's factory. He has claimed that there was no union of workmen in the years 2003 to 2005. He has also filed his affidavit Ex. RW4/A in which he has asserted the facts as pleaded in the reply. He has claimed that the workers had taken their dues and submitted their resignation of their own free will. He has stated that Ravi Dutt had received Rs.41364/- vide two cheques and Mast Ram had also taken the amount of Rs.96424/- vide two cheques and deposited in their accounts. He has claimed that the process was started in November, 2004 and it was finalized on 31.1.2005 and lot of negotiation was carried out with the union President Rajesh Katoch. He has claimed that even the petitioner had withdrawn the EPF by submitting the form. He has stated that no pressure was exerted by the management on the workers. He has stated that the factory was not closed on 31.1.2005 and it was operational. It was closed only after 31.12.2006. In his cross-examination, he has stated that he has joined the factory on 1.3.1996 in the Finance Department. He had left the job on 31.3.2005. He has admitted that the respondent had retrenched the workers illegally. He has stated that the workers were carrying their resignation letter and handed over the same to the management. He has stated that some resignation letters were type written and some were hand written. He has stated that the cheques were given after receiving the resignation letter. He has stated that some workers resigned in December, 2004 and some in January, 2005. He could not tell as to how many workers resigned on 31.5.2005. He has denied that on 31.12.2005, M.C. Pandey, Pradeep Gupta and advocate Notary Public were present, who were attesting their affidavits around 8.30 P.M. He has denied that the respondent had closed the factory gate at 5.00 P.M. and no worker was let out of the factory premises. He has denied that the management had

already obtained the printed forms which the workers were made to sign in dim light of zero watt bulb. He has denied that on that day the police was also present in the factory. He has denied that he was deposing falsely.

13. On the basis of the above evidence led by the parties, it has been submitted on behalf of the petitioner that all the workers should be reinstated from 31.1.2005 and given the service benefits. On the other hand, it has been submitted that the respondent had pleaded that when the workers had resigned from the employment of their own, then it does not amount to retrenchment. It is further submitted that the factory had closed in the year 2006, much after the resignation of the employees. Therefore, the provisions of Sections 25-N and 25-O of the Act were not applicable in this case.

14. After considering the rival contention of the parties, it also appears to this court that the workers had resigned of their own accord from the factory. There is no evidence led by the petitioner that any of the workers have been forced to submit their resignation. Though, it has been claimed on behalf of the petitioners in their evidence that the employees were called by the management and they were made to sign the document and affidavits, which were attested by some notary public. However, the affidavit has filed on behalf of the respondent and not by the petitioners, which is Ex. R-15, which shows that it was attested by the notary public of Nurpur, whereas the factory was at Sansarpur Terrace. It shows that the petitioner had taken the affidavit after attesting it from Nurpur and same was submitted to the management. If the petitioner alleged that the workers were forced to sign the document or that there was undue influence/coercion etc., then specific evidence was required to be led by the petitioner. But, the petitioner union had examined only the President and Secretary and no other workers had come forward to depose in this behalf. However, the plea of undue influence, force etc. is not proved on record specially when the witnesses for the petitioner namely PW1 Mast Ram and PW2 Ravi Dutt have admitted that they have signed these documents and they had taken the cheques and deposited it in their bank account by encashing the same. It is also interesting to note that these witnesses had also filled form for the withdrawal of the provident fund, which was signed by them. These forms mentioned that they had resigned from the post and they intend to withdraw the provident fund amount. It is also interesting that the alleged resignation letter is dated 31.1.2005, whereas the EPF withdrawal form were submitted much thereafter and the money was drawn in June, 2005, i.e. after about five months. If these witnesses i.e. employees had been forced to resign, then there was no question of drawing the provident fund by moving the application after about five months and mentioning the ground of leaving the job as 'RESIGNATION' in column no.6 of application forms Annexure-K and Annexure-L. All this shows that the witnesses/workers of the petitioner union have themselves resigned and they were not forced to resign the job.

15. The petitioner had also not shown that they had made any complaint before any authority on the next working day that they were forced to resign by the management or any person of the factory by use of force etc. Though the workers seems to have approached the Labour Inspector and he addressed a letter Ex R-12 to the respondent, which was replied by it through Ex R-13 and the report Ex R-14 was made to Labour Officer. As noted earlier, no other workmen or previous President of the Union has been produced by the petitioner to prove that all the workers were forced to sign resignation. However, it has been admitted by PW1 and 2 that the previous President Rajesh Katoch had also taken money from the factory and left the job. It thus, appears that had there been coercion or force used by the respondent, then the previous President of the Union Rajesh Katoch would have agitated the matter. Therefore, the submissions made on behalf of the respondent that the employees of the factory resigned of their own and settled their account, has to be accepted.

16. The petitioner has also cited case law in support of its case. It has relied upon the judgment of the Hon'ble Supreme Court in *Excel Wear vs. Union of India*, AIR 1979 S.C. 25, in which it has been held that the right to close down business is a integral part of the fundamental right to carry on business, with certain restrictions.

17. The petitioner has also referred to *M/s. Oswal Agro Furnae Ltd. vs. Oswal Agro Furane Workers Union*, AIR 2005 SC 1555, wherein it has been held that in view of the provisions of Section 25-N and 25-O, obtaining prior permission from government is mandatory before closing down the unit. This preposition of law is not disputed by the opposite side.

18. It has further referred to *Nar Singh Pal vs. Union of India*, AIR 2000 S.C. 1401, in which it has been held that even after receiving the retrenchment compensation, the retrenchment can be challenged by the employee.

19. On the other hand, the respondent has referred to *Maruti Udyog Limited vs. State of Haryana*, 2008 (3) SCT 334 (P&H), in which, after relying on the previous judgments of Supreme Court, it has been held that once the employee has sought voluntary retirement and has accepted the retiral benefits without any protest, then it is not open to him to turn around and say that he was compelled by the circumstances to seek voluntary retirement.

20. The respondent has also referred to *Gyanendra Sahay v. M/s. Tata Iron and Steel Co. Ltd.*, 2006 (III) LLJ 356, in which case also the workman had made allegation that he was forced to take retirement. But it was held by the Hon'ble Supreme Court that the workman had not made specific allegations as to who made him sign the letter for premature retirement. It was held that the suspicion and doubt cannot take the place of evidence. No finding of fact can be given on mere doubt.

21. The respondent has also relied on *Chairman-cum- Managing Director, Thapar House, Ballarpur Industries vs. Presiding Officer, Labour Court, Ambala*, 2014 (II) LLJ 117 (P&H) 117, in which the case also, the workers had taken VRS and had accepted retiral benefits without any objection. So, it was held that the Labour Court has failed to decide the issue of estoppel and the matter was remanded to the Labour Court to decide it afresh.

22. The respondent has also relied on *Punjab & Sind Bank vs. S. Ranveer Singh Bawa*, 2004 LLR 481, where the worker had obtained voluntary retirement and accepted the retiral benefits. Therefore, it was held that he was estopped from challenging the said scheme.

23. The respondent has relied on *JK Cotton Spinning and Weaving Mills Company Ltd. vs. State of U.P.*, 1990 SCC (L&S) 570, wherein the Hon'ble Supreme Court has held in para 8 of the judgment as under:—

8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of Cl. (i) of Sec. 2(s) of the State Act. In *Santosh Gupta's case* (AIR 1980 SC 1219), Chinnappa Reddy, J. observed as under (at p. 1220 of AIR):

"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman."

(Here the word 'retrenchment' has reference to 'retirement'.) The above observation clearly supports the view which commends to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under S. 6N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception to Sec. 2(s) and therefore the question of grant of compensation under S. 6N does not arise. We, therefore, cannot allow the view of the High Court to stand.”

(Emphasis mine)

24. The respondent has also relied on *Laffans India Pvt. Ltd. vs. Pancham Singh Rawat*, 2003 LLR 147, in which case also, the workman had resigned and he did not make any complaint to any authority that he was forced to resign from employment. He kept quiet for 15 months. Therefore, it was held that the such plea was not believable.

25. The respondent has also relied on *Employees in Management, Kusunda Area of M/s. BCCL vs. Presiding Officer, Central Government*, 2003 LLR 618, wherein it was held that mere allegation of employees tendering resignation about duress or coercion, will not be sufficient without supporting evidence.

26. It is further submitted by the respondent that a simple affidavit filed by the petitioner is not sufficient to prove the alleged factum of coercion and duress in submitting the resignation. He has relied on *Range Forest Officer vs. S.T. Hadimani*, 2002 SCC (L&S) 367. Though, in that case it was held by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

27. This is in nutshell the case law relied on by both the sides.

28. After considering the case law as well as the evidence led by both the parties, it appears to this court that the petitioner Union must have brought some cogent evidence to prove that the workers of the factory were forced to resign on various dates and they did accept compensation monetary benefits at the time of their alleged retirement. But, as noticed earlier, that after the tendering or resignation, the President and Secretary of the petitioner union namely Mast Ram (PW1) and Ravi Dutt (PW2) not only accepted the monetary benefits through cheques, which were deposited in their bank account and after about five months, also withdrew the provident fund, by mentioning in the application that they had resigned from the job. This clearly operates as estoppels against the petitioner. Therefore, it appears to this court that the allegations of duress or coercion in submitting the resignation is not duly proved on record by the petitioner Union. Had the workers, including the President and Secretary of the union not accepted the financial benefits, then it could have been presumed that they were forced to resign and they then could have agitated the matter on the very next day. But this has not been done in the present case. Simply because the respondent intended to close down its unit in the year 2004, will not mean that the workers were forced to resign. Because, in this case, it is not proved by the petitioner union that the factory was closed down on 31.1.2005 as alleged. But the evidence produced by on record as discussed above, to prove that the factory was in existence upto 31.12.2006 i.e. up to two years of the submissions of the resignation by the workers. Therefore, in such a case the provisions of Sections 25-N and 25-O of the Act cannot be held to be applicable to the facts of this case, as the factory was not closed down by the respondent, when the workers resigned. It was duly registered till that date, as proved

by RW2 Ashok Kumar, that the factory was registered upto 31.12.2006. The petitioner seems to have passed one resolution Annexure R1 dated 6.3.2005, in which it was for the first time alleged that their resignation were obtained by force or by misleading them. But PW2 has admitted his having deposited the cheques in his account, which he had taken on 4.2.2005 and 7.3.2005 from the respondent. No other document has been filed by the petitioner to prove that the cheques were received and encashed by the PW's 1 and 2 under protest.

29. In view of the above discussions, it appears to this court that there is no specific evidence that the workers were forced to resign. It appears that the workers had voluntarily resigned and they were not forced to resign from the job and they cannot claim that they were still in service, as they do not fit in the definition of the 'workman' after submitting the resignation. In view of the facts and circumstances of the case, I do not find that the demands raised by the petitioner union, as per their demand dated 16.12.2009, are legal and justified. Hence, my findings on Issue No.1 is in the negative and against the petitioners and in favour of the respondent.

30. Once it is held that the workers had resigned from the job by 31.1.2005, they were no more workers of the factory. Therefore, in view of the judgments of the Hon'ble Supreme Court referred to earlier and in Purandaran vs. Hindustan Lever Ltd., 2001 LLR 525, of the Hon'ble High Court of Kerala, relied on by the respondent, the workman of the petitioner Union cannot claim the status of 'workman' under section 2(s) of the Act, after the resignation submitted by them.

31. It was also held specifically by the Supreme Court in CEAT Ltd. vs. Anand Abasahed Hawaldar, 2006 LLR 335 SC, that when the workers has resigned/ taken voluntarily retirement, then his case is not covered under the expression 'workman' under section 2(s) of the Act.

32. Therefore, in this case there is no evidence that the workmen had been forced to resign. They had voluntarily submitted their resignation and accepted the financial benefits including the provident fund amount etc. So, they no more are covered under the expression of 'workman' under section 2(s) of the Act. Hence, the findings on issues No.7 in the affirmative, in favour of the respondent and against the petitioner. Both these issues are decided accordingly.

ISSUE NO. 2

33. In view of the findings on the issues No.1 and 7 above, it appears to me that the demand raised by the petitioner Union is not justified. Because, it appears that the workers had resign voluntarily. Therefore, they are not entitled to any relief, as claimed. Hence, this issue is decided in the negative, against the petitioner and in favour of the respondent.

ISSUE NO. 3

34. It is submitted on behalf of the petitioner that Ravi Dutt and Mast Ram, are President and Secretary of the Union, respectively. In this regard they have relied on the resolution dated 15.9.2008, Annexure PW1/B, which specifically mentioned that Ravi Dutt was elected as President and Mast Ram as General Secretary, who were earlier also appointed as such on 6.3.2005. The other resolution dated 11.10.2011 is Ex. PW1/C which further proved the appointment of this Mast Ram and Ravi Dutt, as such. It has been contended on behalf of the respondent that the Union in fact is not in existence. However, the registration certificate of the union is Ex. PW1/B, which shows that the petitioner union duly registered under the Indian Trade Union Act. The ld. counsel for the respondent had relied on the judgment of Hon'ble HP High Court in LPA No.83/2008. It has though been held by the Hon'ble High Court that writ petition was not filed by the Union and it was filed any individual. The perusal of the judgment of the Hon'ble High Court shows that the same have been filed by the individual and not by the Union through its Secretary etc. Therefore,

the observations have come in the LPA and it was specifically held by the Hon'ble High Court that the union should have been made party in the writ petition. It is clear that the Union of which the petitioners claim to be the office bearers, was not made a party before the Hon'ble High Court. Therefore, the observations came to be made by the Hon'ble High Court in LPA. But, in the present reference, the Union has been made party by through its Secretary and the statement of claim has been filed by the Union.

35. Therefore, keeping in view these facts, my findings on issue No.3 above is in the affirmative and in favour of the petitioner and against the respondent.

ISSUE NO. 5

36. In view of the findings of the issues above, the petitioner Union has locus standi to pursue the case, though, it is other matter that the case may not have finally any merit in it. It is a registered Union under the Trade Union Act. Hence this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 6

37. The respondent has alleged that there is no industrial dispute between the parties. Therefore, the reference is not maintainable. But the petitioner claimed that since their services were retrenched, therefore, there is dispute between the parties. The petitioner has relied on the provisions of Sections 25-N, which deals with the condition precedent to retrench the workman and Section 25-O, which deals with the procedure before closing down an undertaking.

38. It has been submitted on behalf of the petitioners that the respondent had closed down the undertaking on 31.1.2005 and on that day the workers were retrenched. Therefore, the provisions of Section 25-N and 25-O of the Act were to be followed. On the other hand, it has been submitted on behalf of the respondent that the workers had voluntarily resigned on their own and they had accepted the retiral benefits. It was also submitted that the factory was closed on 31.12.2006 i.e. only after about 2 years after the resignations were submitted by the workmen. Therefore, these provisions of Chapter V-B were not applicable in the instant case.

39. In view of my findings on Issues No. 1,2 and 7 above, it appears that the workers had resigned of their own. If the workers had resigned of their own then they could not allege that they were retrenched by the employer. As noted earlier, the workmen had not led any specific evidence that they were forced to submit their resignations by the employer. The case laws cited on behalf of the respondent, as noted earlier, also goes against the workmen and they have not referred to any authority or any law in their favour to prove that even if they had resigned of their own, they were not entitled to raise the dispute under the Act.

40. It has been specifically held in JK Cotton Spinning and Weaving Mills Company Ltd. vs. Sate of U.P., 1990 SCC (L&S) 570, relied on by the respondent, that once the employee has tendered his resignation voluntarily, then it cannot be said that he had been retrenched by the employer. Therefore, the person, who has tendered his resignation, cannot be termed as 'workman', who could raise the dispute by making the demand notice. The case of these workmen, therefore, does not fall within the definition under Section 2(oo) and 2(s) of the Act.

41. In these discussions, it appears that no industrial dispute exists between the parties. Once the petitioner has not proved that the workers had been retrenched by the employer or that there resignations were obtained forcibly, so as to treat it as the retrenchment. Hence my findings on this issue is in the affirmative in favour of the respondent and against the petitioner.

42. In view of the findings on issue No.6 above, it appears that the reference is not maintainable, as the members of the petitioner Union are no more workers of the respondent factory, as they had already resigned from the service voluntarily and they could not be termed as 'workman' under Section 2(s) of the Act. The factory was also not closed when these workers resigned. So, the provisions of Section 25-N and 25-O of the Act are not applicable to the facts of this case.

41. It has argued on behalf of the petitioner that there had been some settlement on 31.1.2005 by closing the factory, which was contrary to the mandatory provisions of Section 25-N and 25-O of the Act. However, the submissions made on behalf of the petitioner has to be stated to be rejected. The Hon'ble High Court in LPA No. 83/2008 has specifically noted that there was no settlement with the Union and it was a question of resignation tendered by the workers and this Court was to give findings on the fact whether the workmen had resigned from service voluntarily or not. Therefore, the case set up regarding alleged settlement cannot be taken up at this stage. Even it is not proved that the factory was closed down on 31.1.2005.

42. In view of the above discussions it has to be that there was no industrial dispute between the parties. Therefore, the reference was also not maintainable in this Forum. Hence, this issue is decided against the petitioner and in favour of the respondent. Both these issues are decided accordingly.

RELIEF

43. In view of the findings on the various issues above, the reference is answered against the petitioner. The petitioner union is not entitled to any relief in this case. Parties to bear their own costs.

44. The reference is answered in the aforesaid terms.

45. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room. Announced in the open Court today this 30th day of June, 2014.

(J. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 133/2013
Date of Institution : 29.8.2013
Date of Decision : 07.07.2014

Shri Kashmir Singh s/o Shri Harnam Singh, r/o Village & P.O. Pakwah, Tehsil Haroli, District Una, H.P.Petitioner.

Versus

1. The Employer/Factory Manager, Sonalika International Car & Motor Ltd., 25th Milestone NH 70, (Una-Amb Road), Industrial Area, Amb, District Una, H.P. (Present Office)
2. The Employer, Village Chak Gujran, P.O. Piplanwala-146022, Jalandhar Road, Hoshiarpur, Punjab (Administrative Office)Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. H.S. Thakur, Adv.

For the Respondents : Sh. Suraj Bhan, Factory Manager, AR

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kashmir Singh R/O Village & P.O. Pakwah, Tehsil Haroli, District Una, H.P. w.e.f. 6-7-2012 by the Employer/Factory Manager, Sonalika International Car & Motor Ltd., 25th Milestone NH 70, (Una-Amb Road), Industrial Area, Amb, District Una, H.P. (Present Office) and the employer, Village Chak Gujran, P.O. Piplanwala 146022, Jalandhar Road, Hoshiarpur, Punjab (Administrative Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After receipt of the reference, the notice was issued to the parties. The petitioner has filed statement of claim, wherein it has been alleged that he was appointed as a Fireman in the respondent No.1 industry upto 11.3.2008, as he was diploma holder of fireman. It is alleged that the plant head Parveen Satija by concocting false and frivolous story had been compelling him to submit his resignation, but he could not succeed. It is alleged that his Punch Card was blocked on 5.7.2012 without giving any show cause notice to him and without adopting any procedure, governing the services of the factory workers. It is alleged that the petitioner had underwent appendices operation, due to which he got sudden pain in the stomach, on which he asked for medical aid from the respondent. But he refused medical aid and asked to take rest in the rest room of the factory. It is alleged that they got some photos while taking rest with dishonest intention to misuse the photos. It is alleged that the petitioner was transferred from the respondent No.1 factory to the respondent No.2 factory, where he was not allowed to join. He was forced to submit his resignation, which he did not agree. It is alleged that at the time of his joining, he was offered the monthly salary of ₹12,000/-, but, he was given ₹2700/- per month, which were later raised to ₹4200/-. But no overtime was paid despite repeated assurance. Therefore, the complaint was made to the Labour Inspector, who referred the matter to the Labour Commissioner, who found that there is industrial dispute. It is, therefore, prayed that the petitioner be reinstated and be given old Punch card as Fireman with regular scale prevalent in Himachal Pradesh along-with arrears and the seniority etc.

3. After appearance, the respondents contested the claim petition by filing of reply, wherein they have taken the preliminary objections regarding maintainability, estoppel, verification of petition and that the petitioner has concealed the true and material facts. On merits, the case of the petitioner has been denied. It is alleged that the petitioner has joined the company as a Fire Guard on 10.3.2008, which vacancy was notified through District Employment Exchange, Una. It

is denied that the petitioner was compelled to submit his resignation. It is alleged that the petitioner was absent from duty and he was issued a show cause notice and he was given an opportunity to report for duty as per notices, which were issued on 13.7.2012 to 27.9.2012. But he failed to report for duty. Therefore, the respondents had no option to strike off his name from the company muster roll. It is alleged that the petitioner was caught red handed while he was sleeping in company reception room and not in the rest room, which he himself admitted in writing. All the allegations made by the petitioner have been denied. It is alleged that the petitioner was offered a consolidated salary of ₹3,000/- per month by the company and not ₹12,000/- per month as alleged. It is alleged that no overtime has been taken by the employers of the factory. It is admitted that the complaint was made before the Conciliation Officer, Una, who submitted his report to the Labour Commissioner, Shimla and this reference has been made. The respondents has denied the case of the petitioner and prayed for the dismissal of his claim.

4. In the rejoinder filed by the petitioner, he has asserted his own case and denied that of the respondents.

5. On 28.02.2014, the following issues were framed:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 06.7.2012 is/was illegal and unjustified as alleged? . . .OPP.
2. Whether the claim petition is not maintainable in the present form? . . .OPR.
3. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? . . .OPR.
4. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . .OPR.
5. Whether the claim petition has not been properly verified as alleged. If so, its effect? . . .OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO.1

8. It is alleged by the petitioner that his services were terminated by the respondent w.e.f. 6.7.2012 in illegal and unjustified manner. It is submitted that no inquiry or show cause notice was

issued to him. On the other hand, it has been submitted on behalf of the respondents that the petitioner had absented and was not attending the factory of his own after 5.7.2012 and his services were not terminated on its own by the factory. It is submitted that after the willful absence from duty, he was also issued notices, but he did not turn up.

9. To prove his case, the petitioner has appeared as PW1 and filed his affidavit Ex. PW1/A in examination-in-chief in which he has alleged that the plant head Parveen Satija by concocting false story to compel his resignation, but he could not succeed. He has claimed that the punch card and gate pass were blocked on 5.7.2012 without giving any show cause notice. He has claimed that due to appendices operation he got severe pain in the stomach and he was not provided medical aid and while he was taking in the rest room, wherein the photographs were taken with dishonest intention. He has stated that he was not given the salary of ₹12000/-, but he was given only ₹2300/- per month, though it was enhanced ₹4300/-. He has also moved the application before the Labour Inspector. In his cross-examination, he has stated that he had signed the appointment letter as Annexure R-1 without going through on it. He has denied that the letter which he received from the Employment Exchange mentioned that the salary of ₹2550/- per month will be paid as per minimum wages. But volunteered that it was ₹6500/- per month and it was to be enhanced after six months training period. He never represented to the factory Manager that his pay was less. He has stated that in welding shop/paint shop, they could not smoke biris. He has admitted his having given apology letter Ex. R-2/RW1/K. In his cross-examination, he has further admitted that he had received the letters Exts. R-3, R-4 and R-5, but volunteered that he received only one letter. He could not specify the date of that letter. He has stated that he visited the factory for the last time on 4.7.2012 and then went on the next day, he was told to join at Hoshiarpur plant. But he was not allowed, to join but his Punch card and gate pass were closed.

10. The petitioner had initially filed the affidavits of two other witnesses namely Bhajan Singh and Ravinder Singh, but they were subsequently not examined and closed the evidence.

11. In rebuttal to the above evidence, the respondent had examined RW1 Suraj Bhan Singh, Factory Manager, Sonalika International Cars, who exhibited the documents i.e. copy of appointment letter Ex. RW1/B, copy of vacancies notified as Ex. RW1/C, Copy of Requisition Form Ex. RW1/D, Copy of Result of interview Ex. RW1/E, Copy of absent from duty Ex. RW1/F, Copy of absent from duty dated 28.7.2012 Ex. RW1/G, copy of absent from duty dated 26.6.2010 Ex. RW1/I, copy of pardon letter Ex. RW1/J, CDs regarding sleeping of the petitioner which was made by the staff as Mark-A1 and copy of apology letter dated 15.3.2012 as Ex. RW1/K. In his cross-examination, he has stated that he has not issued the documents. He has also claimed that the petitioner's gate pass and punch card available in the factory. No suggestion has been given to this witness that the petitioner cannot join the factory due to the fault of the factory and there was no willful absence.

12. On the basis of the pleadings and the evidence led by the parties, it is clear that the petitioner was appointed through Annexure R-1 on consolidated monthly salary of ₹3000/- and not ₹12000/- as claimed by the petitioner. In this regard, the petitioner had been stating falsely. Secondly, the petitioner was appointed as a fire guard and it was duty to not allow smoking of biri in the factory. But it has come on record that he once allowed the workman to smoke and he had offered his apologies through letter Ex. R-2 to the security officer of the factory.

13. It has also come in the evidence against the petitioner that he was also issued one warning letter Mark-A and the petitioner has admitted his signatures on the same. This shows that the work and conduct of the petitioner was not above board.

14. The petitioner claimed that he was not absent from duty, but he was not allowed to join after 4.7.2012 in the factory. However, the important facts and circumstances coming against the petitioner are that he was issued notices regarding absence from duty, which are Exts. R-3, R-4 and R-5, issued on 13.7.2012, 28.7.2012 and 27.9.2012, respectively. The petitioner admitted his having received all these documents. Though, subsequently, he has tried to show that he had received only one letter, but could not specify the date. This shows that he is a clever witness and after understanding that these facts would go against him, he has retracted from his statement regarding receipt of the letters Exts. R-3, R-4 and R-5. Had he denied the receipt of letter at all, it would have been a different matter. But after admitting the things, he could not deny the same. These letters Exts. R-3, R-4 and R-5 show that the respondents had been asking the petitioner to join the duties, as he was found to be willfully absent from duty. It is not shown by the respondent that he had ever replied to the notices Exts. R-3 to R-5 regarding absence from duty. The petitioner claimed that his punch card and gate pass were taken by the respondent. But, he is not shown that he ever moved any letter/ notice asking the factory/manager to return his gate pass and punch card. This shows that the petitioner is not stating the truth.

15. Accordingly, the petitioner is proved to be absent from attending the duties of his own. No record has been filed by the petitioner showing that the services of the petitioner were terminated by the respondents of their own. Rather, the documents available on the record show that the petitioner himself absented from the duties and he has till date not reported for duty before the respondent. Had the petitioner replied to the notices Exts. R-3, R-4 and R-5 and tried to join the duties and had the respondents not allowed the petitioner to join the duties, then there would have been merit in the case of the petitioner. But, as held earlier, the record proved that he has himself not joined the duties. The petitioner has not tried to summon the record of the gate pass and punch card from the factory to prove his case and only made bald allegations. Therefore, it cannot be said that his services were terminated by the respondents. It has to be held that the petitioner has absented from duty of his own, without assigning any reason and no fault can be found with the respondent. The respondent had filed one CD Mark-A1 and it was not exhibited. Therefore, it is not being considered in evidence. No other documentary evidence had been filed by the parties, which may be referred or discussed by this Court.

16. After going through the entire record of the case, this Court does not find that the services of the petitioner were illegally terminated by the respondent, though, it is found that the petitioner has himself absented from duty and he has not joined the duty after absenting w.e.f. 4.7.2012. Hence, my findings on issue No.1 is in the negative, against the petitioner and in favour of the respondents.

ISSUE NO. 2

17. It is not shown by the respondent that the petition is not maintainable in the present form. There is no infirmity in the form of the petition. In fact, the reference has been received from the appropriate Govt. and the petitioner has filed the statement of claim, which is maintainable, though, it is other matter that the petitioner may be entitled for any relief or not. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

18. In view of the findings on issue No.1, it appears that the petitioner has suppressed the material facts from the Court. He has not been found a truthful witness. He has been shown to be absent from duty. He has not given reply to the notices Exts. R-3, R-4 and R-5, issued by the respondents regarding his absence from duty. It is not shown that the services of the petitioner were terminated by the respondents. Rather he had been found to be absent from duty himself. Therefore,

in these circumstances, he is not entitled to any relief. This issue is decided against the petitioner and in favour of the respondents.

ISSUE NO. 4

19. In view of the findings on the issues No. 1 and 3 above, it appears that the petitioner has himself absented from duty and is estopped from filing any claim alleging that his services were illegally terminated. Hence my findings on issue No.4 is in the affirmative, in favour of the respondents and against the petitioner.

ISSUE NO. 5

20. It not shown by the respondent as to how the petition is not verified. No specific arguments have been advanced. This Court does not find any merit in the plea of the respondent. This issue is decided in favor of the petitioner and against the respondents.

RELIEF :

21. In view of the findings on the various issues above, the reference is answered against the petitioner. The petitioner is not entitled to any relief in this case. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 79/2014

Sh. Parma Ram s/o Sh. Inder Singh, r/o Village Jamna, P.O. Bir, Tehsil Sadar, Distt. Mandi, H.P. through Sh. Sunder Singh Sippy, All PWD & IPH Workers Union, Branch at Q. No.100/3, Roda Sector No.2, Bilaspur, Distt. Bilaspur, H.P. . .Petitioner.

Versus

The Executive Engineer, IPH, Division Mandi, Distt. Mandi, H.P.

...Respondent.

09-07-2014 Present: Petitioner with Sh. S.S.Sippy, A.R.

Sh. Sanjeev Singh Rana, D.D.A. for the respondent.

The petitioner has filed an application for withdrawal of the claim. The statement of the petitioner also recorded, who has stated that since he has preferred writ petition before the Hon'ble High Court of H.P., therefore, he (petitioner) does not want to pursue the case.

2. In view of the above facts, the claim of the petitioner is disposed of accordingly, in view of the withdrawal of the same by the petitioner. The petitioner will be entitled to the relief only if it is granted to him by the Hon'ble High Court in pending writ petition.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

09-07-2014

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 52/2013
Date of Institution : 15-03-2013
Date of Decision : 19-07-2014

Sh. Baldev Raj s/o Late Sh. Bhawani Parshad, r/o Village and Post office Sihund, Tehsil and District Kangra, H.P.Petitioner.

Versus

1. Pradhan, Gram Panchayat, Sihund, Tehsil and Distt. Kangra, H.P.
2. Secretary, Gram Panchayat, Sihund, Tehsil and Distt. Kangra, H.P.
3. District Panchayat Officer, Kangra at Dharamshala, Distt. Kangra, H.P.
4. The Assistant Engineer, Irrigation and Public Health, Sub- Division, Nagrota Bagwan, Tehsil Nagrota Bagwan, Distt. Kangra, H.P.Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Sharma, Adv.

For the Respondents. : Sh. Vivek Vashista, Adv.
Sh. Sanjeev Singh Rana, DDA

AWARD

The petitioner has preferred this claim directly under Section 10 of the Industrial Dispute Act, 1947, (hereinafter called as 'the Act', for short) directly before this Court by alleging that he was engaged as a water guard/valve operator on the monthly wages of ₹750/- by respondent No.1 on 01-05-2007, after signing agreement i.e. MOU with the respondent No.4 for the purpose of supply water through tankers for village Sihund, Tehsil and Distt. Kangra, H.P. It is alleged that the petitioner was doing his work honestly and regularly. But his services were terminated in the month of September, 2011 without any reason by the respondents. It is alleged that no notice has been served on him for his illegal termination. The respondents have not followed the procedure under Section 25-F of the Act. It is alleged that even the respondents have stopped monthly wages of the petitioner w.e.f. November, 2010 to September, 2011, despite his continuously work. It is alleged that the respondent has engaged one Shri Sanjay Kumar from 1st Oct., 2011 in place of the petitioner. It is alleged that the petitioner is entitled for back wages of ₹8,200/-. Hence, the petitioner has prayed for his reinstatement with full back wages, from Sept., 2011 with interest and seniority etc.

2. After notice, the respondents appeared to contest the claim. The respondent No.1 in his separate reply alleged that the petitioner was never selected/employed by the Panchayat. It is alleged that the signatures of the Pradhan in MOU were not of the then Pradhan. It is denied that the petitioner was selected for the service. Therefore, there is no question of termination of services by serving the notice under Section 25-F of the Act. It is alleged that the panchayat cannot make payment to the petitioner and he was not engaged by it. It is alleged that now a person has been engaged as valve operator, after observing all codal formalities. Hence, it has prayed for dismissal of the claim.

3. The respondent No.2, its separate reply, has denied that the petitioner was engaged as valve operator from 01-5-2007, as there is no record of selection with the Gram Panchayat, Sihund. It is alleged that there is no reference of such a selection proceedings of Gram Sabha Meetings. It is alleged that the MOU must have been signed by the Pradhan at his personal level. Rest of the respondent has been denied. It is alleged that the payments were made by the I&PH authorities. Hence, the respondent has prayed for dismissal of the claim.

4. The respondents No.3 & 4 in their separate reply have taken the preliminary objections regarding maintainability and cause of action. On merits, it is averred that as per guidelines annexure R-I with regard to scheme for transfer of operation and maintenance of rural water supply scheme, the MOU annexure R-II was signed in the year 2007, between the respondent No.4 and the then Pradhan Gram Panchayat Sihund. As per this MOU, the entire responsibility of operation and maintenance of water supply scheme below sector storage tank in Gram Panchayat Sihund was handed over to the concerned Gram Panchayat. It is alleged that the Gram Panchayat was liberty to employ its own part time worker, for which I&PH department was only to provide financial assistance to the tune of ₹750/- per month. It is alleged that the Gram Panchayat Sihund issued appointment letter to the petitioner as per annexure R-III and verified the attendance. The respondent No.4 used to release the payment through panchayat as per annexure R-IV, which has been disbursed to the petitioner. It is alleged that these respondents have not made any payment of the wages directly. Though, the financial assistance under the guidelines were given to the concerned Gram Panchayat by the I&PH department. It is further alleged that the respondent No.4 received resolution No.4 dated 24-06-2011 of Panchayat along with a cheque, alleging that it had no record of the appointment of petitioner. It is alleged that the stand of the Panchayat was contrary to its own record, as it was continuously disbursing the financial assistance to the petitioner w.e.f. 25-06-2007, which was duly accounted for in the cash book of Panchayat as per annexure R-V. Therefore, the respondents are not responsible for nonpayment wages to the petitioner. It is averred that as per resolution dated 25-09-2011 annexure R-VI, Sanjay Kumar was appointed as a valve operator by the Panchayat, which was made on the basis of the MOU signed by the then Pradhan

and the respondents are releasing financial assistance as per the MOU. In all, the respondents have denied the case of the petitioner and prayed for dismissal of the petition.

5. Rejoinder filed by the petitioner, he has asserted his own case and denied that of the respondents.

6. On 30-09-2013, the following issues were framed:

3. Whether the relationship of employer and employee exists between the parties as alleged? ...OPP.

4. If issue No.1 is proved in affirmative, whether the termination of the services of the petitioner by the respondents w.e.f. Sept., 2011 is illegal and unjustified as alleged? OPP

5. Whether the claim petition is not maintainable in the present form ? ...OPR

6. Whether the petitioner has a cause of action? ...OPP.

5. Relief.

7. I have heard the ld. AR/ counsel for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Yes

Relief : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUES NO. 1 & 2.

9. Both the issues are taken up together being interconnected. The petitioner has filed his affidavit Ex.PW1/A in evidence, in which he has asserted the facts, as pleaded. In his cross examination, he has admitted that the respondents No.1 & 4 have paid the salary. The respondents had also admitted that they had paid salary to the petitioner from 2007 to 2010 and the petitioner is also admitted to have work under the scheme. So, the relationship of the employer and employee is established and no further evidence is required in the matter. The petitioner has denied that the appointment is not made as per the guidelines or that he in convenience with the panchayat got appointment. But no other suggestion has been given as to why the services of the petitioner were terminated.

10. The respondent no.1 has examined RW1 Smt. Roop Lekha, Pradhan, Gram Panchayat, Sihund, who had filed record regarding the resolution and the letters Ex. RW1/B to Ex.RW 1/I. She has tried to support the case of the Panchayat in her affidavit Ex. RW1/A, filed in examination-in-

chief. But in her cross-examination, she has also admitted that the petitioner was appointed water guard as per the scheme sanctioned by the I&P.H. department and panchayat had entered into M.O.U. She has admitted that the money was provided by the I&P.H. department and payment was also made to petitioner by the panchayat. She has stated that the petitioner was appointed during the time of Smt. Ishwari Devi, the previous pradhan, who made payment. She had admitted that when she became pradhan, she terminated the petitioner and appointed Sh. Sanjay Kumar as water guard. She has stated that there was no record of previous appointment, though, the panchayat may be having record regarding the payment. She had admitted that the pradhan had not objected to the payment made to the petitioner till 31-12-2010. She could not tell whether the petitioner was not made payment from November, 2010 to September, 2011. She had not conducted the enquiry regarding the signatures of the previous pradhan Smt. Ishwari Devi. She had denied that the petitioner was appointed as per rules. She has denied that the sister-in-law of the petitioner contested panchayat election against her. She has denied that the petitioner was wrongly removed from the services.

11. The respondent No.2 has also examined RW2 Anil Kumar, A.E. I & PH Dept. He has filed his affidavit Ex. RW2/A. He has also stated the facts as pleaded. He has also filed the record regarding guidelines/ M.O.U. and appointment of the petitioner, detail of payment made, which are Ex. RW2/B to RW2/G. He has stated that the department has issued cheque to the panchayat, which made the payment to the employee. He has admitted that the MOU Ex. RW2/C was signed by the Panchayat Pradhan Smt. Ishwari Devi. He has denied that the MOU was not signed as per the MOU Rules. He has stated that the petitioner was appointed as per RW2/D and he was also made payment by the department through panchayat. He has stated that the pradhan used to verify the attendance of valve operator and used to make payment. He has admitted that after signing MOU Ex. RW2/C, no other MOU was signed. He has stated that they had not terminated the services of the petitioner.

12. After considering the evidence and the record, it is admitted fact that the petitioner was engaged as water guard/valve operator by the respondent no.1 and he was admittedly paid salary as per detail Ex.RW2/E, from 01-05-2007 till 31-12-2010. The recommendation of the petitioner was made by the then Pradhan as per document Ex.RW2/D. It has also come in evidence that the guidelines of the appointment of the water guard are Ex. RW2/B and panchayat was to appoint the person. It appears that the respondents No.1 and 2 have not proved that they had any legal right to remove the petitioner from the part time work. He was engaged by the panchayat from 2007 till 2010. It is not case of the panchayat that the petitioner himself absented from duty, so that it could engage another person. Rather, RW1 Smt. Roop Lekha Korla, new pradhan, had claimed that the signature of the previous pradhan Smt. Ishwari Devi were forged on the recommendation letter. Therefore, his services were terminated. But the I&P.H. department has admitted that the MOU was signed between the department and previous pradhan Smt. Ishwari Devi and no MOU was signed with the new pradhan i.e. RW1. The guidelines/ MOU do not prescribe the manner or form, in which the appointment order was to be made, but after the appointment was made with the concurrence of the I&P.H. Department, then the panchayat had no power to engage the services of new valve and water guard at its whim.

13. Further, no notice had been issued to the petitioner, as required under section 25-F of the Act, as the petitioner had been continuously working for more than one year (240 days) when the respondent no.1 illegally removed him. No compensation or wages in lieu of the notice were given to him by the respondent no.1. RW1 has admitted that no enquiry was conducted by her in this regard and she presumed that the petitioner was appointed against the guidelines and the signatures of the previous pradhan were forged. RW1 thus, seems to be telling a lie, just to save her skin. Thus, the principle of the natural justice have not been followed by RW1, the new pradhan. Her action in removal of the petitioner cannot be justified on any count.

14. In view of the above discussion, it is held that there is relationship of the employer and employee between the parties. Hence, my findings on issue No.1 is in favour of the petitioner and against the respondents.

15. In view of the above discussion, it has to be held that the petitioner could not have been removed from service in the manner as done by RW1. Therefore, the action of the Pradhan, Gram Panchayat Sihund appears to be illegal and contrary to law. Hence, my findings on Issue no.2 are in the affirmative and in favour of the petitioner and against the respondents. Both the issues are decided accordingly.

ISSUE NO. 3

16. It is not shown by the respondents as to how the petition is not maintainable in the present form. There is no infirmity in the form of the petition. The petitioner has filed the statement of claim directly, which is maintainable in view of the provisions of section 2A of the Act. This issue is therefore, decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

17. In view of my findings of issues No.1&2 above, it appears that the petitioner has cause of action. Hence, my findings on the above issue is against the respondent and in favour of the petitioner.

RELIEF :

18. In view of the findings on the issues above, the claim succeeds and it is held that the removal of the petitioner by the respondent No.1 from service of water guard is illegal and unjustified. Therefore, the petitioner shall be deemed to be in the service of the panchayat/respondent no.1 as water guard, with all consequential benefits, except back wages. He shall be kept on the work by the panchayat as per MOU already entered between the respondent No.4 and previous pradhan, on the same terms and conditions. He shall be allowed to join forthwith and latest by 15.8.2014. The respondents, will however be at liberty, in future, to terminate his services, but only as per law. It is however made clear that the person appointed in place of the petitioner shall be the responsibility of the respondents no.1 and 2 and they shall see as to where to adjust him, what work to take from him and from where to pay him. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room. Announced in the open Court today this 19th day of July,

14.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 267/2012
Date of Institution : 29.6.2012
Date of Decision : 21.07.2014

Shri Jagdish Kumar s/o Shri Bholu Ram, r/o Village Tarangali, P.O. Serikothi, Tehsil Sundar Nagar, Distt. Mandi, H.P.Petitioner.

Versus

Shri Lal Chand Sharma, Govt. Contractor C/O Sh. Devi Chand Gupta, Hanoti, P.O. Purana Bazar, Sundar Nagar, Distt. Mandi, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent : Sh. Pankaj Thakur, Adv.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether person performing the work of carriage of material by Mules Transportation and loading and unloading the material himself, is covered under the definition of workman? If yes, whether the demand of Sh. Jagdish Kumar S/O Sh.Bholu Ram, R/O Village Tarangali, P.O. Serikothi, Tehsil Sundar Nagar, Distt. Mandi, H.P. before the Sh. Lal Chand Sharma, Govt. Contractor C/O Sh. Devi Chand Gupta, Hanoti, P.O. Purana Bazar, Sundar Nagar, Distt. Mandi, H.P. to pay him the wages amounting to Rs.50,133.50/- with interest @ 12% P.A. on account of transportation of fuel wood, is legal and justified? If yes, what relief of Payment of Wages and interest he is entitled to from the above said employer?”

2. After receipt of the reference, the notice was issued to the applicant, who has filed the application under Section 33-C of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) by averring that the applicant was employed as a labourer by the respondent to carry the timber through head load w.e.f. 14.1.2005 to 26.8.2005 and the applicant worked as employee of the respondent. He has alleged that the applicant was employed on the clear cut instructions that the payment would be made on the completion of the work. But the respondent never made the payment to the applicant amounting to ₹50,133.50/-. Hence, this claim.

3. After appearance, the respondent filed reply by taking the preliminary objections regarding maintainability and jurisdiction. On merits, the case of the applicant has been denied. It is alleged that through his mules and mares transported the wood of the respondent w.e.f. 14.1.2005 to 26.8.2005. It is alleged that the applicant is not a labourer of the respondent, therefore, the provisions of the Act do not apply. It is alleged that the applicant has not completed the work through his mules and mares and left the work incomplete, which caused harassment and inconvenience to the respondent. It is alleged that the applicant had received an amount of ₹66,871/- from the respondent as per the receipts and he thus, received ₹16,736/- in excess. It is further averred that the applicant had also filed an application before the Labour-cum-Conciliation

Officer, Mandi, by averring that he transported the wood of the respondent through mules and mares, which fact was mentioned in order dated 27.8.2005 of Labour Officer, as also in this reference. The respondent has denied the case of the petitioner and prayed for the dismissal of his claim.

4. On 06.03.2013, the following issues were framed:
 1. Whether the petitioner is a workman as alleged? . .OPP.
 2. Whether the petitioner is entitled to the wages as claimed? . .OPP.
 3. Whether the claim petition is not maintainable? . .OPR.
 4. Whether this Court has no jurisdiction to entertain and decide the matter? . .OPR.
 5. Relief.
5. I have heard the ld. counsel/AR for the parties and have gone through the case file.
6. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

7. Both the issues have been taken up together for determination, being interconnected. It has been alleged by the petitioner that he is a workman under the respondent and therefore, he is entitled to the wages for the period from 14.1.2005 to 26.8.2005 amounting to ₹50133.50/-, as he has carried the timber on head load, from various places, upto the depot of the respondent, who is forest contractor. On the other hand, the respondent has alleged that the petitioner was not engaged as a labourer, but he had transported the wood through his mules and mares for the aforesaid period. Therefore, he is not covered under the Act.

8. To prove the respective cases, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief as Ex. PW1/A, in which he has asserted that his own case, as pleaded. He has also claimed that there is a relationship of employer and employee between the parties. He also files the original bills Exts. PW1/B to E, to show that he had carried the wood, which bills gave quantity of the wood and the rates to be paid. In his cross-examination, he has claimed that he was not having mules and mares in the year 2005. He has stated that he had given an application to the Labour Inspector, Sunder Nagar in 2005 and his statement was recorded on 27.8.2005, which is Ext. R1 and signed by him. He has stated that he never complaint against the Labour Inspector, for wrongly recorded his statement. He was confronted with the receipts Exts. R-2 to R-4, showing various payment made to him during the year 2005, but claimed that the receipts

pertains to the years 2003 and 2004 and when he signed the same, no date was written on it. But this fact was not pleaded by him in his claim. He has claimed that in the year 2005, no amount was received by him from the respondent. He had written a letter to the Labour Commissioner, which is Ex. PW1/F, but could not tell as to on which date it was sent. He has denied that he had transported the wood on his mules for the disputed period and regarding this fact he had also made the statement before the Labour Inspector. He has denied that the respondent had already made payment of ₹16,736/-, in excess to him.

9. In rebuttal the above evidence, the respondent has also appeared as RW1 and filed his affidavit of examination-in-chief Ex. RW1/A, in which he has also asserted that the facts as pleaded. He has claimed that the petitioner/claimant has received an amount of ₹66,871/- and he had thus taken the amount of ₹16,736/- in excess. He has claimed that the claimant had only transported the wood through mules and mares, which has also come in the order of the Labour-cum-Conciliation Officer dated 27.8.2005. In his cross-examination, he has admitted that the claimant had worked with him from 14.1.2005 to 26.8.2005, but volunteered that he had transported the wood on his mules and mares. He has claimed that the receipts Exts. PW1/B to E were issued by his clerk. He has denied that the amount of ₹50,133.50/- was not paid. But, claimed that he had to receive about ₹16,000/- paid in excess to the claimant. He had also produced the receipts before the Labour Officer during the conciliation. He has denied that he had forged the receipts. He has denied that the claimant is a labourer.

10. On the basis of the above evidence, it becomes clear that the claimant had only transported the wood on various dates given in the receipts Exts. PW1/B to E. The claimant has admitted before the Labour Inspector in his statement Ex. R1 that he worked with the respondent from December, 2004 to June, 2005. This fact is further corroborated by the receipts Exts. PW1/B to E and the statement of the claim made before the Labour Inspector, that he was to be paid transportation charges, per quintal of wood, by the contractor and different rates were to be paid for the transportation of the wood, from different places. The claimant has not clarified as what action he has taken against the Labour Inspector, if he has wrongly recorded in his statement. It is found that in the statement of claim and the demand notice, he has changed the version by claiming that he was labourer with the respondent and he carried wood on head load and not on the mule and mares. However, it is significant to note that in the statement of claim, the claimant has nowhere stated that he was the daily wager or on salary, which the claimant/petitioner had to get from the respondent and how he had claimed the outstanding amount of ₹50,133.50/-. The receipts Exts. PW1/B to E, mentions different rates and quantity of wood to be carried. It is thus, probable that the claimant/petitioner had to transport the wood from different places upto the depot of the respondent at village Doduwan and Pung. Had the claimant been entitled only to the daily wages, then he would have made specific pleadings that he was drawing salary of specific amount, per day and for specific days or months, he was not paid the salary. But these pleadings are missing and keeping in view the statement Ex. R1, it becomes clear that the claimant/petitioner was only entitled for the transportation charges of the mules, which he alleges to have not been paid, though the respondent claims that these were paid through receipts Exts. R-2 to R-4. It is also to be noted that the claimant has admitted his signatures on Ext. R-2 R-4 receipts, which have been issued on 11.3.2005, 19.6.2005 and 20.7.2005, respectively, for various amounts. In the demand notice, which was sent to the Labour Commissioner, is Ex. PW1/F, wherein he has alleged that the receipts were forged and some places the figures have been wrongly mentioned. But, the bare perusal of the Exts. R-2 to R-4, shows that the amount of money was written in words and as well as in figures. Therefore, it is not made clear by the Id. counsel for the claimant as to how these receipts were forged especially when he had signed the same.

11. In view of the above discussions, it appears that the claimant has not proved himself to be a workman within the meaning of the provisions of Section 2(s) of the Act. Rather, he was to do

specific work i.e. transportation of wood from various places upto the depot in villages Doduwan and Pung and different rates were to be paid to him for the said transportation. This does not make him a workman. Hence, my findings on the Issue no.1 is in the negative, against the petitioner and in favour of the respondent.

12. In view of the above discussions, since the petitioner has not proved himself to be the workman under the respondent, therefore, he is not entitled for any wages, as prayed for. Because, the evidence coming on the record suggest that the respondent had already been paid the transportation charges of the wood through the receipts Exts. R-2 to R-4 and if there is any dispute regarding the excess payment made by the respondent or non- payment to the claimant/petitioner, the same does not come within the purview of the Act and the remedy lies before the Civil Court as per law. Hence my findings on the issues No.2 is in the negative, against the petitioner and in favour of the respondent. Both the issues are decided accordingly.

ISSUE NO. 3

13. In view of my findings on the issues No.1 and 2 above, it appears that the present petition is not maintainable before this Court, as no industrial dispute has arisen in this case and the dispute is not between the workman and the employer regarding wages, but it is regarding transportation charges only. Hence my findings on issue No.3 is in the affirmative, in favour of the respondent and against the petitioner.

ISSUE NO. 4

14. In view of the findings on the issues No.1, 2 and 3 above, it appears that no industrial dispute has arisen between the parties. The claim of the petitioner/claimant is not covered under the provisions of the Act. The claimant has raised the dispute regarding non payment of transportation charges to him. But this non payment is not on account of any work having been done by any workman under the employer. But it may be dispute regarding transportation charges of carriage by mules, which is not covered under the Act. Therefore, this Court has no jurisdiction to deal with this matter. Hence my findings on issue No.4 is in the affirmative, in favour of the respondent and against the petitioner.

RELIEF:

15. In view of the findings on the various issues above, it has to be held that the claimant/petitioner is not a workman under the respondent, as he had only transported the wood through his mules and mares, from different places upto the depot of the respondent at villages Doduwan and Pung, at Sunder Nagar, which does not make the petitioner/claimant a workman under the Act. Therefore, the claimant/petitioner is not entitled to any relief under the Act and his claim is accordingly dismissed. The claimant/petitioner is at liberty to recover the amount, if any, outstanding against the respondent, before the Civil Court or appropriate Forum as per law and he can claim the benefit under the limitation Act for preferring the remedy before the wrong forum. Parties to bear their own costs.

16. The reference is accordingly, answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of July, 2014.

(J. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 109/2014

Smt. Kalawati w/o Shri Anil Kumar, r/o Block No.3 Industrial Area Sansarpur Terrace,
Tehsil Jaswan, District Kangra, H.P.Petitioner.

Versus

The Managing Director/Employer, M/S Terrace Pharmaceuticals (P) Ltd., Plot No.3 B (a),
Phase-III, Industrial Area, Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. ...Respondent.

24-07-2014 Present : Sh. Vishal Awasthy, Adv., csl. for the petitioner.
Sh. Mohit Kumar, Adv. vice csl. for the respondent.

Statement of claim not filed. Ld. csl. for the petitioner has stated as per the instruction received from the petitioner, she does not want to press this claim. The statement of counsel recorded.

2. In view of the above facts, the claim of the petitioner is disposed of accordingly, as withdrawn. The termination order dated 29-01-2013, therefore, cannot be said to be illegal and unjustified.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:
24-07-2014

(J. K. SHARMA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 202/2012
Date of Institution : 07.4.2012
Date of Decision : 24.07.2014

Shri Sunil Kumar s/o Shri Ramesh Kumar Workman, R/O village Konsal, P.O. Bassi,
Tehsil Joginder Nagar, Distt. Mandi, H.P.Petitioner.

Versus

The Resident Engineer, HPSEB Bassi Power House, Joginder Nagar, Distt. Mandi, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Sh. Sunil Kumar S/O Sh. Ramesh Kumar Workman, R/O Village Konsal, P.O. Bassi, Tehsil Joginder Nagar, Distt. Mandi, H.P. by The Resident Engineer, HPSEB Bassi Power House, Joginder Nagar, Distt. Mandi, H.P. w.e.f. 26.12.1997 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After receipt of the reference, the notice was issued to the petitioner and he has filed statement of claim by averring that he was engaged by the respondent on muster roll in Bassi Power House as a daily waged beldar w.e.f. 30.4.1996, without any appointment letter and he worked under the Assistant Engineer Maintenance/Electrical Sub Division upto 25.12.1997. It is alleged that the services of the petitioner were engaged by giving fictional breaks without any notice and he had not been provided regular muster roll and could not complete 240 days. It is alleged that his services were verbally terminated by the respondent on 26.12.1997 without serving any termination notice or without any misconduct on his part and no inquiry was held. It is alleged that there has been violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) as no one month pay in lieu of notice was paid. It is alleged that the respondent has violated the principle of ‘last come first go’, as juniors to him were regularized in violation of the provisions of Section 25-G of the Act and he was not given an opportunity for re-engagement by violating the provisions of Section 25-H of the Act. The petitioner had also approached the Administrative Tribunal, camp at Mandi and filed O.A. No.391/2001, which was dismissed in the year 2006 on the point of jurisdiction. Thereafter, he had raised the demand notice, but the Labour Commissioner declined his case. The petitioner has also served second demand notice on 30.12.2008 and thereafter, the present reference has been made.

3. After appearance, the respondent has filed the reply whereby taking the preliminary objections regarding locus standi, limitation and maintainability. It is alleged that the petitioner had not worked 240 days in a calendar year. It is alleged that the petitioner was engaged purely on temporary basis as per availability of the funds and work and no person junior to the petitioner, except those who were ordered to be appointed by the Court, were kept. On merits, it is denied that no fictional breaks were given to the petitioner and during the period of his engagement, he had worked for 108 days only. It is alleged that the petitioner was engaged for a specific work and on casual basis. Therefore, the respondent had not violated the principle of ‘first come last go’. The respondent has denied the case of the petitioner and prayed for the dismissal of his claim.

4. In the rejoinder filed by the petitioner, he has asserted his own case and denied that of the respondent.

5. On 09.01.2013, the following issues were framed:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 26.12.1997 is illegal and unjustified as alleged? . . .OPP.

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2. Whether the petitioner has the locus standi to sue? . .OPP.
 3. Whether the petitioner has a cause of action? . .OPR.
 4. Whether the claim petition is not maintainable in the present form? . .OPR.
 5. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . .OPR.
 6. Relief.
 6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : Yes

Relief. : Reference answered accordingly.

REASONS FOR FINDINGS

ISSUE NO.1

8. It has been alleged by the petitioner that the termination of his services w.e.f. 26.12.1997 is illegal and unjustified. It is alleged that he was given fictional breaks, therefore he should be taken in service and given seniority, as the juniors were given appointment and made regular. However, the respondent has alleged that the petitioner had worked only for 108 days and thereafter, he did not turn up. He was also stated to be engaged on temporary basis as per the availability of the funds and work. Therefore, it is also alleged that the respondent had not regularized any junior to the petitioner, except by way of Court orders.

9. To prove the respective cases, the petitioner has himself appeared as PW1 and filed his affidavit of examination-in-chief Ex. PW1/A, in which he has asserted the facts as pleaded. He has also claimed that the respondent has retained the services of his juniors; Suresh Kumar, Tek Chand and Rajinder Singh and made them regular. Therefore, the respondent has violated the provisions of Sections 25-F and 25-G of the Act as he was not re-engaged. He had also raised the demand notice, but his request was not accepted and he has approached the State Administrative Tribunal and again he made the demand notice, on which the present reference was made. He has also filed the various documents i.e. representation dated 10.8.2001 Ex. PW1/B, copy of O.A. No.391/2001 Ex. PW1/C, copy of demand notice dated 5.3.2006 Ex. PW1/D, copy of letter dated 28.11.2008 Ex. PW1/E, copy of demand notice dated 1.10.2011 Ex. PW1/F, copy of letter dated 25.8.2009 Ex. PW1/G, copy of mandays chart Ex. PW1/H, Seniority list Ex. PW1/I, copy of seniority list for the years 1994 to 2011 Ex. PW1/J and Copy of CWPNo.1166/2005 Ex. PW1/K in support of his case. In his cross-examination, he has admitted that he has worked only as per mandays chart Ex. PW1/H

and he never completed 240 days in any calendar year. He has claimed that whenever the department called, he went for the job and he was called for specific work. He has denied that the department has not engaged any of his juniors. But volunteered, the juniors have been shown in the seniority list Ex. PW1/J.

10. In rebuttal, the respondent has examined RW1 Sansar Singh, Assistant Engineer, HPSEB, Electrical Bassi Power House, Joginder Nagar and filed his affidavit of examination-in-chief Ex. RW1/A. He has also stated that the petitioner had worked only for 108 days on temporary and casual basis and for specific work only. He has also filed mandays chart Ex. RW1/B and orders of the Labour Commissioner dated 4.9.2013 Ex. RW1/C, whereby it had refused to refer the case to this Court on the demand notice of the petitioner. In his cross-examination, he has stated that no appointment letter had been issued to the petitioner. They had not issued the muster roll to the petitioner after 26.12.1997. But volunteered that he was a casual worker. He has stated that Suresh Kumar, Tek Chand and Rajinder Singh etc. are still working with them, who are juniors to the petitioner, but volunteered that they have been engaged only on the orders of this Court and the State Administrative Tribunal. He has admitted that the detail of daily wagers Ex. PW1/J was issued by the department. He has denied that the petitioner has been wrongly removed from service.

11. On the basis of the evidence led by both the parties, it has been submitted that the petitioner has been wrongly removed from service, whereas the juniors to the petitioner have been retained in service. The petitioner has himself admitted in the evidence that he was called by the respondent for doing the work whenever the same was available and when the work has not available, then he was not called. He has also admitted that he used to be called for special work. It is admitted from the side of the respondent that no appointment letter was issued and it seems to be the reason for dispute in the present and such similar cases coming to the Courts. It appears that when any authority has been given the power to engage some person by spending the public money, then the least the public authority is expected, is to issue some letter mentioning for what purposes the services of the persons is being engaged. Because, the public authority is not spending the money out of his own pocket, but the public money is being spent. Therefore, the public authorities should specify in the letter of appointment or engagement as to for what purpose the engagement has been made and what would be its duration and what would be the rights and liability of the employee and employer. This would minimize the workmen and employer litigating in such cases. But the public authorities seem to be taking the matters lightly and engaging and disengaging of the services of the worker at their whim.

12. From the evidence of RW1, it is tried to be shown that the services of the juniors of the petitioner were not re-engaged by the respondent of its own, but they were shown to be engaged on the orders of this Court or State Administrative Tribunal. This fact is clear from the seniority list Ex. PW1/I, which shows that the juniors of the petitioner were shown to be reappointed on the basis of the orders, in some cases passed by this Court or the State Administrative Tribunal. This fact was also mentioned in the detail of daily wage workers re-engaged, which is Ex. PW1/J, relied on by the petitioner himself. The fact that the juniors were re-engaged by the respondent on the orders of this Court or the State Administrative Tribunal, is important. Because, the petitioner could succeed in the case by alleging violation of the provisions of section 25-F of the Act, if he proves that he had worked for more than one year (240 days) continuously. But in this case the petitioner had worked only for 108 days in all. For succeeding on the ground of violation of the provisions of sections 25-G and 25-H of the Act, he has also to prove that his juniors were re-engaged by the respondent of its own and in such a case, the condition of continuous working for a year (240 days) is not required.

13. Recently, it has been held by the Division Bench of the Hon'ble H.P. High Court in State of H.P vs. Chet Ram, CWP No. 3887 of 2011, decided on 3.6.2011, as under:

“5. The difference between Section 25F read with Section 25B and Section 25G and 25H is that a workman has to be in continuous service for claiming the benefit under Section 25F read with Section 25B, whereas for the protection of Section 25G and 25H one need only be a workman covered by the Industrial Disputes Act. In fact, last come first go is the crux of the consideration under Section 25G and 25H of the ID Act, as held by the Apex Court in Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 Supreme Court Cases 192.”

14. The petitioner has not filed any other record to show that the juniors of the petitioner were re-engaged by the respondent in violation of the principle of ‘first come last go’. No suggestion was given to RW1 that his juniors had been re-appointed by the respondent of its own. Had this been so, then there would have been violation of the provisions of Section 25-H of the Act, by not giving the preference to the petitioner in re-engagement. But the juniors are shown to be appointed only on the directions of this Court and that of the State Administrative Tribunal, then it cannot be said that the respondent had violated the provisions of Section 25-H of the Act. The petitioner has not filed the orders of this Court or the State Administrative Tribunal, pertaining to his juniors, to prove that the fact situation in those cases were similar to this case. Therefore, it cannot be said as to on what ground the juniors of the petitioner were ordered to be re-engaged by this Court and the State Administrative Tribunal. Therefore, in the absence of the record being filed by the petitioner to prove that any person was appointed by the respondent of its own, ignoring the petitioner, this Court does not find any illegality in the action of the respondent in re-engaging the services of the juniors of the petitioner, when the respondent was admittedly directed by this Court or State Administrative Tribunal, to re-engage them.

15. But, in the present case, it appears that after disengaging the services of the workman, no workman had been re-engaged for doing the departmental work by the respondent, except on the orders of this Court or the State Administrative Tribunal. Therefore, I do not find that there has been any violation of the provisions of the Act, especially the provisions of Section 25-F, 25-H of the Act. Hence, my findings on Issue No.1 is in the negative, against the petitioner and in favour of the respondent.

ISSUE NO.2

16. It appears that when the services of the petitioner had been disengaged, then he is at liberty to challenge his disengagement and he would succeed only if there is merit in his case. But in view of the findings on issue no.1 above, he has no locus standi to sue. Hence, this issue is decided against the petitioner and in favour of the respondent.

ISSUE NO.3

17. In view of the findings on issue No.1 above, it appears that the petitioner has no cause of action in the present claim and this issue is decided against the petitioner and in favour of the respondent.

ISSUE NO.4

18. The respondent has not pointed out any infirmity in the form of petition. The reference has been received from the appropriate Government and the petitioner had only to file the statement of claim. No infirmity has been pointed out in the form of the statement of claim. This issue is thus, decided in favour of the petitioner and against the respondent.

ISSUE NO. 5

19. In view of the findings on the above issues, it appears that the petitioner had not challenged the alleged illegal termination at the earliest. He was said to be illegally terminated on

25.12.1997 as per verbal orders, but he did agitate the matter. Further, he only filed the petition before the State Administrative Tribunal in the year 2001 i.e. after more than four years and he made the demand notice under the Act only on 05.3.2006, which was declined by the Id. Labour Commissioner. Thereafter he again made the second demand notice on 31.12.2008, which was now referred to this Court. This shows that there has been delay in raising the demand by the petitioner by challenging his alleged illegal termination.

20. It has been held by the Hon'ble Supreme Court in Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota vs. Mohan Lal, (2013) 5 SCC 136, wherein also there was delay in raising the dispute, that the workman is not entitled for reinstatement and he can be given the compensation. In that case, the workman had worked only for 286 days, though in the present case the petitioner had worked only for 108 days. Therefore, in this case, it is held that there has been delay in approaching the appropriate authority and raising the dispute, in which there is no merit. Therefore, the delay in raising the dispute is not going to make any difference. Hence, the issue No.5 is decided in the affirmative, in favor of the respondent and against the petitioner.

RELIEF:

21. In view of the findings on the issues above, the reference is answered against the petitioner. The petitioner is not entitled for the reinstatement, continuity in service, seniority and wages as prayed for. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room. Announced in the open Court today this 24th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 147/2013

Date of Institution : 09.9.2013

Date of Decision : 25.07.2014

Shri Prem Kishore s/o Shri Keshav Ram, r/o Village Bari, P.O. and Tehsil Sunder Nagar,
District Mandi, H.P.Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.R. Badhan, Adv

For the Respondent : Already exparte

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Prem Kishore S/o Shri Keshav Ram, R/O Village Bari, P.O. and Tehsil Sunder Nagar, District Mandi, H.P., who was employed as Asstt. Librarian, by the Chairman, M.G. Group of Institute, Badhu, Tehsil Sadar, District Mandi, H.P. w.e.f. 21.08.2012 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. After notice, the petitioner appeared and filed the statement of claim by averring that he was appointed as Assistant Librarian in the pay scale of 3120-100-5400 with start of ₹4000/- plus allowances vide letter No.MGIET/Appt./11- dated 5.9.2011. It is alleged that during the period from June, 2012 to August, 2012, there were vacations in the institute and after availing the vacations on 21 August, 2012 along-with other staff members went to the office of the respondent. But he was not allowed to join his duties, nor notice of termination was given to him, which was in violation of the terms and conditions as per condition No.3 of the appointment letter. It is alleged that the respondent did not pay the salary to him for the vacation period from April, 2012, nor he was paid one month salary in lieu of notice to terminate his services. It is alleged that the petitioner was entitled for grant of increment of ₹100 w.e.f. 5.9.2012 in his scale. It is alleged that as per condition No.5 of the appointment letter, the petitioner had completed one year probation period, therefore his services could not be terminated without compliance of the provisions of Article 311 (2) of the Constitution of India. Hence, the applicant/petitioner is entitled for the salary, compensation with 15% interest from the respondent.

3. After notice, the respondent initially appeared, but subsequently he did not file any reply and he was proceeded against exparte.

4. The petitioner to prove his case, filed affidavit Ex. PW1/A, in which he has asserted the facts as pleaded. He has also filed his appointment letter Ex. PW1/B, which prescribed the terms and conditions of the appointment. The appointment letter shows that the petitioner was appointed as Assistant Librarian in the pay scale of 3120-100-5400 with the pay of ₹4,000/-, the rate drawn by him. In the affidavit, it has been asserted by the petitioner that he has not been paid the salary for the vacation period from April, 2012 and after vacations, he was not allowed to join his duties. No termination notice has been issued to him.

5. It may be noted that initially, the respondent appeared to contest the claim, but subsequently the respondent did not appear nor filed any reply. Thus, the pleadings and the evidence of the petitioner has gone unchallenged.

6. The appointment letter does not contain any clause that the services of the petitioner will be terminated without following any rule and at the whim of the respondent. Rather, condition No.3 of Ex. PW1/B provides that “the appointment may be terminated at any time by one month’s notice given by either side or paying one month’s salary in lieu thereof”. But in this case, it is not shown that the petitioner was given any notice or in lieu thereof, one month salary was paid to the petitioner, before the respondent terminated his services. Therefore, the action of the respondent is also violative of the provisions of Section 25-F of the Act. Further, there is no delay in this case, in raising the industrial dispute by the petitioner.

7. The petitioner had also not been paid the salary from April, 2012 to August, 2012 i.e. for five months. The respondent has also not contested this claim under section 33-C of the Act. Therefore, it appears that the action of the respondent is illegal and not justifiable.

8. Accordingly, the present claim is allowed. The petitioner is held entitled the salary for five months i.e. from April, 2012 to August, 2012 at the rate he was drawing at that time, within a period of six weeks from today, failing which it shall be paid with 9% interest by the respondent. As the services of the petitioner were terminated illegally, therefore, the petitioner shall be deemed to in the service of the respondent with all consequential benefits, except back wages, till he joins in the respondent institute. He shall be allowed to join the duty, latest by 15.8.2014. The respondent will however be at liberty, in future, to terminate his services, but only as per law.

9. The reference is answered in the aforesaid terms.

10. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 150/2013
Date of Institution : 09.9.2013
Date of Decision : 25.07.2014

H.P. Shri Pankaj s/o Shri Brestu Ram, r/o Village and P.O. Lohara, Tehsil Sadar, District Mandi,
....Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.R. Badhan, Adv.

For the Respondent : Already exparte

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Pankaj S/O Shri Brestu Ram, R/O Village and P.O. Lohara, Tehsil Sadar, District Mandi, H.P., who was employed as Lab

Technician, by the Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P. w.e.f. 21.08.2012 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. After notice, the petitioner appeared and filed the statement of claim by averring that he was appointed as a Laboratory Technician in the pay scale of 5480-160-9200 plus allowances vide letter No.MGIET/Appt./11-7075 (b), dated 24.2.2011. It is alleged that during the period from June, 2012 to August, 2012, there were vacations in the institute and after availing the vacations, he along with other staff members went to the office of the respondent on 21 August, 2012. But he was not allowed to join his duties, nor any notice of termination was given to him, which was in violation of the terms and conditions as per condition No.3 of the appointment letter. It is alleged that the respondent did not pay the salary to him for the vacation period from April, 2012, nor he was paid one month salary in lieu of notice to terminate his services. It is alleged that the petitioner was entitled for grant of increment of ₹160 w.e.f. 24.2.2012 in his scale. It is alleged that as per condition No.5 of the appointment letter, the petitioner had completed one year probation period, therefore his services could not be terminated without compliance of the provisions of Article 311 (2) of the Constitution of India. Hence, the petitioner is entitled for the salary, compensation with 15% interest from the respondent.

3. After notice, the respondent initially appeared, but subsequently it did not file any reply and the respondent was proceeded against exparte.

4. The petitioner to prove his case has filed his affidavit Ex. PW1/A in examination-in-chief, in which he has asserted the facts as pleaded. He has also filed appointment letter Ex. PW1/B, which prescribed the terms and conditions of the appointment. The appointment letter shows that the petitioner was appointed as Lab Technician in the pay scale of 5480-160-9200 with the pay of ₹8,220/-. He has also filed experience certificate Ex. PW1/C, showing his consolidated salary @ ₹8,200/-, which was issued by the Principal of the respondent institute. He has also filed copy of demand notice Ex. PW1/D, which was sent to the respondent as well as to Labour-cum-Conciliation Officer, Mandi, regarding his dispute. It has been asserted by the petitioner that he has not been paid the salary for the vacation period from and after vacations, he was not allowed to join his duties. No termination notice has been issued to him.

5. It may be noted that initially, the respondent appeared to contest the claim, but subsequently the respondent did not appear nor filed any reply. Thus, the pleadings and the evidence of the petitioner has gone unchallenged.

6. The appointment letter does not contain any clause that the services of the petitioner will be terminated without following any rule and at the whim of the respondent. Rather, condition No.3 of Ex. PW1/B provides that "the appointment may be terminated at any time by one month's notice given by either side or paying one month's salary in lieu thereof". But in this case, it is not shown that the petitioner was given any notice or in lieu thereof, one month salary was paid to the petitioner, before the respondent terminated his services. Therefore, the action of the respondent is also violative of the provisions of Section 25-F of the Act. Further, there is no delay in this case, in raising the industrial dispute by the petitioner.

7. The petitioner had also not been paid the salary from April, 2012 to August, 2012 i.e. for five months. The respondent has also not contested this claim under section 33-C of the Act. Therefore, it appears that the action of the respondent is illegal and not justifiable.

8. Accordingly, the present claim is allowed. The petitioner is also entitled the salary for five months i.e. from April, 2012 to August, 2012, at the rate he was drawing at that time, within a period of six weeks from today, failing which it shall be paid with 9% interest by the respondent. As the services of the petitioner were terminated illegally, therefore, he is ordered to be reinstated and the petitioner shall be deemed to in the service of the respondent with all consequential benefits, except back wages. He shall be allowed to join the duty forthwith by the respondent and latest by 15.8.2014. The respondent will however be at liberty, in future, to terminate his services, but only as per law.

9. The reference is answered in the aforesaid terms.

10. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of July, 2014.

(J.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 174/2013
Date of Institution : 27.9.2013
Date of Decision : 25.07.2014

Shri Amit Kumar Sharma s/o Shri Santosh Kumar Sharma, r/o Village Panjali, P.O. Dugha,
Tehsil and District Hamirpur, H.P.Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.R. Badhan, Adv.
For the Respondent : Already exparte

AWARD

The following Reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Amit Kumar Sharma S/O Shri Santosh Kumar Sharma, R/O Village Panjali, P.O. Dugha, Tehsil and District Hamirpur, H.P.,

who was employed as Lab Technician, drawing wages Rs.11,200/- per month, but not worked in supervisory capacity, by the Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P. w.e.f. 23.8.2012 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. After notice, the petitioner appeared and filed the statement of claim, by averring that he was appointed as a Laboratory Technician in the pay scale of 5480-160-9200 plus allowances vide letter No.MGIET/Appt./08-706 (1), dated 25.8.2008. It is alleged that during the period from June, 2012 to August, 2012, there were vacations in the institute and after availing the vacations on 21 August, 2012, he along-with other staff members went to the office of the respondent. But he was not allowed to join his duties, nor any notice of termination was given to him, which was in violation of the terms and conditions as per condition No.3 of the appointment letter. It is alleged that the respondent did not pay the salary to him for the vacation period from April, 2012, nor he was paid one month salary in lieu of notice to terminate his services. It is alleged that the petitioner was entitled for grant of increment of ₹160 w.e.f. 25.8.2009 in his scale. It is alleged that as per condition No.5 of the appointment letter, the petitioner had completed one year probation period, therefore his services could not be terminated without compliance of the provisions of Article 311 (2) of the Constitution of India. Hence, the petitioner is entitled for the salary, compensation with 15% interest from the respondent.

2A. After notice, the respondent initially appeared, but subsequently he did not file any reply and he (respondent) was proceeded against exparte.

3. The petitioner to prove his case and filed his affidavit Ex. PW1/A as examination-in-chief, in which he has asserted the facts of the case. He has also filed appointment letter Ex. PW1/B, in which prescribed the terms and conditions of the appointment. The appointment letter shows that the he (petitioner) was appointed as Lab Technician in Computer Science & Engineering in the pay scale of 5480-160-9200 with the pay of ₹8,460/-. He has also filed experience certificate Ex. PW1/C showing his salary @₹11,200/-, which was issued by the Principal of the respondent institute and the bank statement Ex. PW1/D showing the last credit of salary of ₹11,200/-. He has also filed a demand notice Ex. PW1/E, which was sent to the respondent as well as to Labour-cum-Conciliation Officer, Mandi, regarding his dispute. It has been asserted by the petitioner that he has not been paid the salary for the vacation period from April, 2012 and after vacations, he was not allowed to join his duties. No termination notice has been issued to him.

4. It may be noted that initially, the respondent appeared to contest the claim, but subsequently the respondent did not appear nor filed any reply. Thus, the pleadings and the evidence of the petitioner has gone unchallenged.

5. The appointment letter does not contain any clause that the services of the petitioner will be terminated without following any rule and at the whim of the respondent. Rather, condition No.3 of Ex. PW1/B provides that "the appointment may be terminated at any time by one month's notice given by either side or paying one month's salary in lieu thereof". But in this case, it is not shown that the petitioner was given any notice or in lieu thereof, one month salary was paid to the petitioner, before the respondent terminated his services. Therefore, the action of the respondent is violative of the provisions of Section 25-F of the Act. Further, there is no delay in this case, in raising the industrial dispute by the petitioner.

6. The petitioner had also not been paid the salary from April, 2012 to August, 2012 i.e. for five months. The respondent has also not contested this claim under section 33-C of the Act. Therefore, it appears that the action of the respondent is illegal and not justifiable.

7. Accordingly, the present claim is allowed. The petitioner is also entitled the salary for five months i.e. from April, 2012 to August, 2012, which shall be paid to the petitioner within a period of six weeks, failing which it shall be paid with 9% interest by the respondent. As the services of petitioner were terminated illegally, therefore, he is ordered to be reinstated and the petitioner shall be deemed to in the service of the respondent with all consequential benefits from August, 2012, except back wages. He shall be allowed to join the duty by the respondent forthwith and latest by 15.8.2014. The respondent will however be at liberty to terminate his services only as per law.

8. The reference is answered in the aforesaid terms.

9. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 149/2013
Date of Institution : 09.9.2013
Date of Decision : 25.07.2014

Shri Jai Krishan s/o Shri Dhani Ram, r/o Village Nehra, P.O. Sukibain, Tehsil Sadar,
District Mandi, H.P.Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent
Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.R. Badhan, Adv.

For the Respondent : Already exparte

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Jai Krishan S/O Shri Dhani Ram, R/O Village Nehra, P.O. Sukibain, Tehsil Sadar, District Mandi, H.P., who was employed as Lab Technician, by the Chairman, M.G. Group of Institute, Badhu, Tehsil Sadar, District Mandi, H.P. w.e.f. 21.08.2012 without following the provisions of the Industrial

Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. After notice, the petitioner appeared and filed the statement of claim by averring that he was appointed as a Laboratory Technician in C.S.E. in the pay scale of 5480-160-9200 plus allowances vide letter No.MGIET/Appt./08-704 (F), dated 11.8.2008. It is alleged that during the period from June, 2012 to August, 2012, there were vacations in the institute and after availing the vacations on 21 August, 2012 along-with other staff members went to the office of the respondent. But he was not allowed to join his duties, nor any notice of termination was given to him, which was in violation of the terms and conditions as per condition No.3 of the appointment letter. It is alleged that the respondent did not pay the salary to him for the vacation period from April, 2012, nor he was paid one month salary in lieu of notice to terminate his services. It is alleged that the petitioner was entitled for grant of increment of `160 w.e.f. 11.8.2009 in his scale. It is alleged that as per condition No.5 of the appointment letter, the petitioner had completed one year probation period, therefore his services could not be terminated without compliance of the provisions of Article 311 (2) of the Constitution of India. Hence, the applicant/petitioner is entitled for the salary, compensation with 15% interest from the respondent.

3. After notice, the respondent initially appeared, but subsequently he did not file any reply and the respondent was proceeded against exparte.

4. The petitioner to prove his case has filed his affidavit Ex. PW1/A in examination-in-chief, in which he has asserted the facts as pleaded. He has also filed appointment letter Ex. PW1/B, which prescribed the terms and conditions of the appointment. The appointment letter shows that the petitioner was appointed as Lab Technician in the pay scale of 5480-160-9200 with the pay of ₹5,480/-. He has also filed experience certificate Ex. PW1/C, regarding his work and conduct, which was issued by the Principal of the respondent institute. Ex. PW1/D which is the bank statement showing the last credit of salary of `9500/-. He has also filed copy of demand notice Ex. PW1/E, which was sent to the respondent, as well as to Labour-cum-Conciliation Officer, Mandi, regarding his dispute. It has been asserted by the petitioner that he has not been paid the salary for the vacation period from April, 2012 and after vacations, he was not allowed to join his duties. No termination notice has been issued to him.

5. It may be noted that initially, the respondent appeared to contest the claim, but subsequently the respondent did not appear nor filed any reply. Thus, the pleadings and the evidence of the petitioner has gone unchallenged.

6. The appointment letter does not contain any clause that the services of the petitioner will be terminated without following any rule and at the whim of the respondent. Rather, condition No.3 of Ex. PW1/B provides that "the appointment may be terminated at any time by one month's notice given by either side or paying one month's salary in lieu thereof". But in this case, it is not shown that the petitioner was given any notice or in lieu thereof, one month salary was paid to the petitioner, before the respondent terminated his services. Therefore, the action of the respondent is violative of the provisions of Section 25-F of the Act also. Further, there is no delay in this case, in raising the industrial dispute by the petitioner.

7. The petitioner had also not been paid the salary from April, 2012 to August, 2012 i.e. for five months. The respondent has also not contested this claim under section 33-C of the Act. Therefore, it appears that the action of the respondent is illegal and not justifiable.

8. Accordingly, the present claim is allowed. The petitioner is also entitled the salary for five months i.e. from April, 2012 to August, 2012, at the same rate he was drawing at that time,

within a period of six weeks from today, failing which it shall be paid with 9% interest by the respondent. As the service of the petitioner were terminated illegally, therefore, he is ordered to be reinstated and the petitioner shall be deemed to be in the service of the respondent with all consequential benefits, except back wages. He shall be allowed to join the duty forthwith by the respondent, latest by 15.8.2014. The respondent will however be at liberty in future to terminate his services, only as per law.

9. The reference is answered in the aforesaid terms.

10. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 173/2013
Date of Institution : 27.9.2013
Date of Decision : 25.07.2014

Shri Hoshiyar Singh s/o Shri Khajana Ram, r/o Village and P.O. Sandhol, Tehsil
Jaisinghpur, District Mandi, H.P.Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.R. Badhan, Adv.

For the Respondent : Already exparte

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Hoshiyar Singh S/O Shri Khajana Ram, R/O Village and P.O. Sandhol, Tehsil Jaisinghpur, District Mandi, H.P., who was employed as Instructor, but not worked in supervisory capacity, by the Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P. w.e.f. 21.08.2012 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. After notice, the petitioner appeared and filed the statement of claim by averring that he was appointed as a Workshop Instructor in the monthly salary of ₹13,050/- plus allowances. It is alleged that the petitioner had worked from August, 2008 with the respondent till the termination of his services i.e. 21.8.2012. It is alleged that during the period from June, 2012 to August, 2012, there were vacations in the institute and after availing the vacations on 21 August, 2012, he along-with other staff members went to the office of the respondent. But he was not allowed to join his duties, nor any notice of termination was given to him, which was in violation of the terms and conditions as per condition No.3 of the appointment letter. It is alleged that the respondent did not pay the salary to him for the vacation period from April 2012, nor he was paid one month salary in lieu of notice to terminate his services. It is alleged that the petitioner was paid monthly salary of ₹13,050/- plus other allowances and the regular pay scale was not stated in the experience certificate. It is further alleged that later on the salary of the petitioner was reduced to ₹9500/-, which was not paid to him w.e.f. April, 2012 to August, 2012. It is alleged that as per condition No.5 of the appointment letter, the petitioner had completed one year probation period, therefore his services could not be terminated. Hence, the applicant/petitioner is entitled for the salary, arrears of D.A. and compensation with 15% interest from the respondent.

2. After notice, the respondent initially appeared, but subsequently he did not file any reply and he (respondent) was proceeded against exparte.

3. The petitioner to prove his case, filed his affidavit Ex. PW1/A in examination-in-chief, in which he has asserted the facts as pleaded. He has filed experience certificate Ex. PW1/B only, which was issued by the Principal of the respondent institute on 23.5.2012 showing that the petitioner had joined the respondent as Workshop Instructor in Carpentry shop. The petitioner has asserted that his monthly salary was ₹9,500/-. It has been also asserted by the petitioner that he has not been paid the salary for the vacation period from April, 2012 and after vacations, he was not allowed to join his duties. No termination notice has been issued to him.

4. It may be noted that initially, the respondent appeared to contest the claim, but subsequently the respondent did not appear nor filed any reply. Thus, the pleadings and the evidence of the petitioner has gone unchallenged.

5. The respondent has not filed any record to show that it had the powers whereby the services of the petitioner could be terminated without following any rule and at the whim of the respondent. Rather, as per section 25-F of the Act, he was to be given 'one month's notice indicating reasons for retrenchment or paid one month's salary in lieu thereof'. But in this case, it is not shown that the petitioner was given any notice or in lieu thereof, one month salary was paid to the petitioner, before the respondent terminated his services. Therefore, the action of the respondent is violative of the provisions of Section 25-F of the Act. Further, there is no delay in this case, in raising the industrial dispute by the petitioner.

6. The petitioner had also not been paid the salary from April, 2012 to August, 2012 i.e. for five months. The respondent has also not contested this claim under section 33-C of the Act. Therefore, it appears that the action of the respondent is illegal and not justifiable.

7. Accordingly, the present claim is allowed. The petitioner is also entitled the salary for five months i.e. from April, 2012 to August, 2012, at the rate he was drawing at that time, within a period of six weeks from today, failing which it shall be paid with 9% interest by the respondent. As the service of the petitioner were terminated illegally, therefore, he is ordered to be reinstated and the petitioner shall be deemed to in the service of the respondent with all consequential benefits, except back wages. He shall be allowed to join the duty forthwith by the respondent, latest by 15.8.2014. The respondent will however be at liberty to terminate his services only as per law.

8. The reference is answered in the aforesaid terms.

9. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF J.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 175/2013
Date of Institution : 27.9.2013
Date of Decision : 25.07.2014

Shri Manohar Lal s/o Shri Khub Ram, r/o Village and P.O. Shala, Tehsil Chachyot, District
Mandi, H.P.Petitioner.

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.R. Badhan, Adv.

For the Respondent : Already exparte

AWARD

Following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Manohar Lal S/O Shri Khub Ram, R/O Village and P.O. Shala, Tehsil Chachyot, District Mandi, H.P., who was employed as Workshop Inspector, drawing wages Rs.11,200/- per month, but not worked in supervisory capacity, by the Chairman, M.G. Group of Institute, Badhu, Tehsil Chachyot, District Mandi, H.P. w.e.f. 21.08.2012 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. After notice, the petitioner appeared and filed the statement of claim by averring that he was appointed as a Workshop Instructor in the pay scale of 3200-85-4900 with start of ₹5000/- plus allowances, vide letter No.MGIET/Appt./07-21-A (1), dated 15.6.2007. It is alleged that during the period from June, 2012 to August, 2012, there were vacations in the institute and after

availing the vacations on 21 August, 2012 along-with other staff members went to the office of the respondent. But he was not allowed to join his duties, nor any notice of termination was given to him, which was in violation of condition No.3 of the terms and conditions of appointment letter. It is alleged that the respondent did not pay the salary to him for the vacation period, nor he was paid one month salary in lieu of notice to terminate his services. It is alleged that the petitioner was entitled for grant of increment w.e.f. 15.6.2008 in his scale. It is alleged that as per condition No.5 of the appointment letter, the petitioner had completed one year probation period, therefore his services could not be terminated without compliance of the provisions of Article 311 (2) of the Constitution of India. Hence, the applicant/petitioner is entitled for the salary, compensation with 15% interest from the respondent.

3. After notice, the respondent initially appeared, but subsequently he did not file any reply and he (respondent) was proceeded against exparte.

4. The petitioner to prove his case, has filed his affidavit Ex. PW1/A in examination-in-chief, in which he has asserted the facts as pleaded. He has also filed appointment letter Ex. PW1/B, which prescribed the terms and conditions of the appointment. He has also filed experience certificate Ex. PW1/C, showing his consolidated salary @₹11,200/-, issued by the Principal of the respondent institute; the bank statement Ex. PW1/E showing the last credit of salary of ₹11,200/-. He has also filed a demand notice Ex. PW1/D, which was sent to the respondent as well as to Labourcum-Conciliation Officer, Mandi, regarding the dispute. The appointment letter shows that the petitioner was appointed as Work Instructor in the pay scale of 3200-85-4900 with the pay of ₹5,000/-. It has been asserted by the petitioner that he has not been paid the salary for the vacation period from April, 2012 and after vacations, he was not allowed to join his duties. No termination notice has been issued to him.

5. It may be noted that initially, the respondent appeared to contest the claim, but subsequently the respondent did not appear nor filed any reply. Thus, the pleadings and the evidence of the petitioner has gone unchallenged.

6. The appointment letter does not contain any clause that the services of the petitioner will be terminated without following any rule and at the whim of the respondent. Rather, condition No.3 of Ex. PW1/B provides that “the appointment may be terminated at any time by one month’s notice given by either side or paying one month’s salary in lieu thereof”. But in this case, it is not shown that the petitioner was given any notice or in lieu thereof, one month salary was paid to the petitioner, before the respondent terminated his services. Therefore, the action of the respondent is violative of the provisions of Section 25-F of the Act. Further, there is no delay in this case, in raising the industrial dispute by the petitioner.

7. The petitioner had also not been paid the salary from April, 2012 to August, 2012 i.e. for five months. The respondent has also not contested this claim under section 33-C of the Act. Therefore, it appears that the action of the respondent is illegal and not justifiable.

8. Accordingly, the present claim is allowed. The petitioner is entitled the salary for five months i.e. from April, 2012 to August, 2012, at the rate he was drawing at that time, within a period of six weeks from today, failing which it shall be paid with 9% interest by the respondent. As the services of the petitioner were terminated illegally, therefore, he is ordered to be reinstated and the petitioner shall be deemed to in the service of the respondent with all consequential benefits, except back wages. He shall be allowed to join the duty forthwith by the respondent, latest by 15.8.2014. The respondent will however be at liberty in future to terminate his services, only as per law.

9. The reference is answered in the aforesaid terms.

10. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of July, 2014.

(J. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.